

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3371**

Heard in Montreal, Thursday, 11 September 2003

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

The assessment of 30 demerit marks to Montreal East Rail Traffic Controller M. Quintin and his subsequent dismissal account an accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On December 12, 2000 an investigation was conducted into events that occurred during a December 6, 2000 shift that RTC Quintin was working on the Galt Subdivision desk.

On December 21, 2000, RTC Quintin's discipline record was debited with thirty (30) demerit marks for "failing to follow prescribed rules and procedures for the protection of a defective crossing, resulting in a defective crossing at Mile 121.55 on the Havelock Subdivision being unprotected, thereby jeopardizing safe train operations, a violation of CROR Rule 103 SS!, 148, General Rules A(iii), (iv), RTC Responsibilities Item (r)".

RTC Quintin was subsequently dismissed on account of an accumulation of demerit marks.

The Union advanced a grievance contending the discipline assessed was excessive and that RTC Quintin should have been offered a "Deferred Discipline" option, in lieu of discharge, given that he was a long service employee. The Union requests that RTC Quintin be returned to service with no loss of seniority.

The Company asserts the discipline assessed the grievor was warranted and appropriate given all the circumstances and declined the grievance.

FOR THE UNION: FOR THE COMPANY:

(SGD.) J. R. RUDDICK (SGD.) J. J. WORRALL
GENERAL CHAIRMAN FOR: GENERAL MANAGER, NMC

There appeared on behalf of the Company:

J. Worrall - Labour Relations Officer, Calgary
S. Seeney - Manager, Labour Relations, Calgary

And on behalf of the Union:

J. Ruddick - General Chairman, Burlington
G. Hallé - Canadian Director, Ottawa
K. Essery - Vice-General Chairwoman, Calgary
D. MacIver - Local Chairman, Montreal
F. Leeb - Local President, Calgary

AWARD OF THE ARBITRATOR

Upon a review of the material the Arbitrator is satisfied that the Company is correct in concluding that the grievor was deserving of a serious measure of discipline for his failure to abide by the rules, and in particular failing to issue GOP protection for the defective crossing on the Havelock Subdivision on December 6, 2000. While it is arguable that the grievor's knowledge that no train would be moving in the vicinity of the crossing without his knowledge, so that he could have prevented any perilous use of the crossing is a mitigating factor, the Arbitrator is more persuaded by the position of the Company that the failure of Mr. Quintin to abide by the strict requirements of the rules did create a hazardous situation for which he was deserving of a severe measure of discipline.

The sole issue is whether it is appropriate in the circumstances to substitute an alternative penalty. The Union's representative stresses that although the grievor had fifty-five demerits on his record at the time of the incident, he was close to being discipline free for the period of one year, which would have resulted in the reduction of his record by some twenty demerits. Additionally, it is stressed to the Arbitrator that Mr. Quintin has relatively long service with the Company, having been hired in 1984.

On balance, I am satisfied that a substitution of penalty can be applied in the case at hand. Considering that the grievor has been out of service since December 21, 2000, his reinstatement into employment, without loss of seniority and without compensation for any wages and benefits lost, would be tantamount to the substitution of an extremely extensive

suspension for the infraction in question. Further, given that the grievor would return to work with a record of fifty-five demerits, he will obviously be well aware of the obligation to be extremely careful in adhering to all rules and procedures in the discharge of his duties.

The grievance is therefore allowed, in part. The Arbitrator directs that the thirty demerits assessed against the grievor be struck from his record, that he be reinstated into his employment forthwith without compensation for wages and benefits lost, with his disciplinary record to stand at fifty-five demerits.

September 19, 2003

(signed) MICHEL G. PICHER
ARBITRATOR