

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3396**

Heard in Montreal, Tuesday, 13 January 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE**

DISPUTE - BROTHERHOOD:

Claim involving the assessment of twenty (20) [demerits] to Mr. Wayne Smith.

DISPUTE - COMPANY:

Alleged violation of Article 18.6 of Agreement 10.1 when the Company assessed 20 demerits to Mr. Wayne Smith effective October 28, 2002 for "violation of G.O.I. Section 8, Rule 3.1(f) and (g) and failure to ensure that necessary safety precautions were taken when you failed to remove a rail slider from the mainline before Train 777 was cleared through the work limits".

BROTHERHOOD'S STATEMENT OF ISSUE:

The grievor was assessed with 20 demerits for, in the Company's words, a "violation of GOI Section 8, Rule 3.1(f) and (g) and failure to ensure that necessary safety precautions were taken when you failed to remove a rail slider from the mainline before Train 777 was cleared through the work limits on October 28, 2002." A grievance was filed.

The Union contends that **(1.)** Mitigating factors existed that should have served to reduce the amount of discipline assessed; **(2.)** The grievor is a long service employee; **(3.)** The discipline assessed was excessive and unwarranted in the circumstance.

The Union requests that the discipline assessed be removed from the grievor's record.

The Company denies the Union's contentions and declines the Union's request.

COMPANY'S STATEMENT OF ISSUE:

The grievor admittedly failed to comply with safety procedures associated with use of safety device and he failed to report the incident in accordance with General Operating Instruction Section 8, Rule 3.1(f) and (g).

The Union contends in their *ex parte* statement of issue that: **(1.)** Mitigating factors existed that should have served to reduce the amount of discipline assessed; **(2.)** The grievor is a long service employee, **(3.)** The discipline assessed was excessive and unwarranted in the circumstance.

The Union requests that the discipline assessed be removed from the grievor's record.

The Company contends there was no violation of Article 18.6 as the grievance procedure was properly administered in accordance with the collective agreement and the grievor was justifiably disciplined for his involvement in the incident.

Additionally, the Company contends the Union failed to reveal what mitigating factors they are relying upon in their statement of issue that should have served to reduce the amount of discipline assessed thereby restricting the Company's ability to prepare it's arguments or otherwise consider such factors.

FOR THE BROTHERHOOD: FOR THE COMPANY:
(SGD.) R. S. DAWSON (SGD.) K. MORRIS
SYSTEM FEDERATION GENERAL CHAIRMAN FOR: VICE-PRESIDENT, WESTERN
CANADA REGION

There appeared on behalf of the Company:
K. Morris - Manager, Human Resources, Edmonton
R. Bateman - Sr. Manager, Labour Relations, Toronto
J. Lowe - Manager, Bridges & Structures,
A. Y. DeMontigny - Sr. Manager, Labour Relations, Montreal
T. S. Urbanovich - Manager, Operating Practices

And on behalf of the Brotherhood:
P. Davidson - Counsel, Ottawa
D. W. Brown - Sr. Counsel, Ottawa
R. Paulin - General Chairman,
W. Smith - Grievor

AWARD OF THE ARBITRATOR

The record confirms that the grievor did fail to remove his rail slider from the main track on the Cisco Bridge shortly prior to the passage of a train. The rail slider serves as an anchor for a safety line attached to the employee. In the circumstances the grievor believed that he would be away from the work location only momentarily, and when the approach of the train was subsequently signalled he forgot about his rail slider. In the result it appears that the metal device was run over by the train, or alternatively by a piece of track equipment which cleared the bridge before the train's arrival. In either event, there can be no doubt that the grievor's negligence created a dangerous situation.

A review of the grievor's prior disciplinary record does not disclose any rules or safety violations over a period of some twenty-three years of service. In the circumstances, notwithstanding the seriousness of the incident in the case at hand, I am satisfied that the assessment of ten demerits would have been sufficient to draw to the grievor's attention the necessity of greater caution with respect to following safe work practices.

The grievance is therefore allowed, in part. The Arbitrator directs that ten demerits be substituted for the twenty demerits assessed against Mr. Smith for the incident of October 28, 2002 on the Cisco Bridge, Ashcroft Subdivision.

February 19, 2004

(signed) MICHEL G. PICHER
ARBITRATOR