

# **CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION**

## **CASE NO. 4723**

Heard in Montreal, January 16, 2020

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

### **DISPUTE:**

Appeal of the dismissal of Conductor A. Blossom of Roberts Bank, BC.

### **THE JOINT STATEMENT OF ISSUE:**

Following an investigation, Mr. Blossom was dismissed as follows: "For failing to ensure the proper securement of your train as evidenced by failing to cut in the air and stretch the joint while working as a Conductor on train V94-23 on January 23, 2018. A violation of the Rule Book for Train and Engine Employees Section 2, Item 2.1(a)(b), 2.2 (a)(b)(c), Section 2, Item 2.3, CROR 113 Coupling Equipment.

Notwithstanding that the abovementioned incident warranted dismissal in and of itself, based on your previous discipline history; this incident also constitutes a culminating incident which warrants dismissal."

### **Union Position:**

The Union contends the Company has failed to meet the burden of proof required to sustain formal discipline regarding the allegations outlined above. The Union further contends the Company has failed to establish the abovementioned incident warranted dismissal, or that it constitutes a culminating incident worthy of discharge. In the alternative the Union submits Mr. Blossom's dismissal is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter.

The Union submits the Company has engaged in the unreasonable application of the Proficiency Test policy and procedures, resulting in the discriminatory and excessive assessment of discipline.

The Union requests that Mr. Blossom be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

### **Company Position:**

The Company disagrees and denies the Union's request.

The Grievor's culpability was established through the fair and impartial investigation. Discipline was determined following a review of all pertinent factors including the Grievor's service and his past discipline record. Further, before discipline was assessed the Company duly considered all mitigating and aggravating factors.

In regards to the allegations concerning proficiency testing, the Company maintains that it is in no way restricted from conducting a formal investigation based on the result of a failed proficiency test.

The Company's position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed.

**FOR THE UNION:**

**(SGD.) D. Fulton**

General Chairperson

**FOR THE COMPANY:**

**(SGD.) S. Oliver**

Manager, Labour Relations

There appeared on behalf of the Company:

- |              |   |
|--------------|---|
| D. Pezzaniti | – Assistant Director, Labour Relations, Calgary |
| D. Guerin    | – Senior Director, Labour Relations, Calgary    |

And on behalf of the Union:

- |             |                                       |
|-------------|---------------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto        |
| D. Fulton   | – General Chairperson, Calgary        |
| J. Hnatiuk  | – Vice General Chairperson, Coquitlam |
| W. Apsey    | – General Chairperson, Smiths Falls   |
| A. Blossom  | – Grievor, Port Moody                 |

**REASONS FOR THE AWARD**

**Issued On February 16, 2020**

1. As agreed with the parties at the hearing a decision was issued with reasons to follow since it had to be rendered no later than February 16, 2020.

**THE BACKGROUND**

2. On July of 1985, the Grievor was hired on with CP Maintenance of Way department. For the next 18 years, he remained with the Maintenance of Way department with progressing job responsibilities on various work crews throughout B.C. and Alberta.

3. In October 2003, the Grievor transferred to the running trades in Port Coquitlam, qualified as a Conductor and has worked in yard and freight service out of Port Coquitlam, Vancouver and Roberts Bank.

### **THE CIRCUMSTANCES GIVING RISE TO THE DISMISSAL**

4. On December 22, 2017, the Grievor had been assessed with a twenty day suspension “for damaging company vehicle and failing to properly report the incident while working as a conductor at Roberts Bank on December 9, 2017”.

5. Also, on February 26, 2018, the Grievor had been assessed with at thirty day suspension for “Failing to properly detrain locomotive while working as the Conductor on assignment V94-19 on January 19, 2018.

6. Grievances have been filed for both suspensions and are now before this arbitrator.

### **The Dismissal**

7. On January 23, 2018, The Grievor was called as the Conductor on Road switcher V94 along with Locomotive Engineer Barb Thomas.

8. At approximately four hours into the shift, the Grievor was doubling up his train in the Port Coquitlam Yard in track AT05 in preparation to depart to begin his switching activities for the evening. The Grievor and crew were being watched by Assistant Superintendent Adam Smith.

9. According to Mr. Smith, the Grievor did not stretch the coupling and was in violation of CRO Rule 113 which reads:

**113. COUPLING TO EQUIPMENT**

- (a) Before coupling to equipment at any point, care must be taken to ensure that such equipment is properly secured.
- (b) Unless otherwise specified in special instructions, before coupling to or moving equipment being loaded or unloaded, all persons in or about such equipment must be notified. Vehicles and loading or unloading devices must be clear.
- (c) Before coupling to or moving service equipment, employees occupying such equipment must be notified and any attachments secured.
- (d) When coupling to equipment for any purpose except when humping or flat switching where cars are intentionally let run free, the coupling must be stretched to ensure it is secure.
- (e) To prevent by-pass couplers when coupling to equipment on other than tangent track, a stop must be made not less than 6 nor greater than 12 feet from the coupling and extreme caution must then be used, ensuring couplers are properly aligned prior to coupling being made.
- (f) After coupling, the equipment must be checked for applied hand brakes as may normally be expected to be present.
- (g) To prevent damage to equipment and injury to passengers, when coupling to passenger equipment a stop must be made not less than 6 nor greater than 12 feet from the coupling and a speed of 2 MPH must not be exceeded.

(Emphasis Added)

10. Mr. Smith documented his observation in a *Memorandum to File* dated January 27, 2018:

At approximately 23:15 on January 23rd I was performing Efficiency Tests in A yard. I witnessed Conductor Al Blossom working the V94 back onto his train in AT05. Mr. Blossom was located on the North side of AT05 when the coupling was made. I was situated on the south side of the train. When the coupling occurred I witnessed no slack adjust on the standing portion of the train or the headend portion. Mr. Blossom did not stretch the coupling. He cut the air into

the cars and removed one handbrake and then walked to the head end of the train and departed.

A conversation took place with Mr. Blossom about the things he did properly during the testing observation, as well as the exception noted about failing to stretch the coupling.

(Emphasis Added)

11. On January 25, 2018, the Grievor was given a *Notice of Investigation* to take place on January 29, 2018 in connection with the alleged efficiency test failure.

12. On January 29, 2018, the Grievor attended an investigation in connection with:

“Your tour of duty as Conductor on V94-23, when you were observed not stretching the coupling while working in AT05 track in Coquitlam Yard on January 23<sup>rd</sup> 2018 at 2315”

13. The Grievor answered the following questions:

25. Can you provide this investigation a reason why you did not stretch the coupling in this manner?

A. The knuckles came together, slack adjusted; pin dropped, asked for 3 point, coupled the hoses, and departed. The train did not come apart while leaving the yard.

26. Do you understand that why you would need to stretch the coupling?

A. Yes

27. Do you understand these instructions are issued by Canadian Pacific to prevent incidents or accidents which may cause injury to its employees?

A. Yes

28. Are you aware that not stretching the coupling in the manner noted in Asst. Superintendent Smith’s memo can cause accidents?

A. I understand the importance of ensuring a proper coupling.

(Emphasis Added)

## **THE ISSUE**

14. The issue in dispute is the discharge of the Grievor in respect of the coupling of equipment observed by Assistant Superintendent Smith on January 23, 2018.

15. The dismissal is also based on his previous discipline history and the fact that the incident constitutes a culminating incident.

## **THE DECISION**

16. Assistant Superintendent Mr. Smith, from an unknown distance from the equipment, says that he witnessed no slack adjustment upon the coupling. On its side, the Grievor states that “the knuckles came together, slack adjusted; pin dropped”.

17. The account of the Grievor is more credible than the one made by Assistant Superintendent Smith, if nothing else than the fact that he was not close to the equipment.

18. Mr. Smith did not make his presence known to the crew and he permitted that they complete their daily switching activities for the entire remainder of the shift. The crew worked approximately six additional hours after the efficiency test by Mr. Smith on January 23, 2018.

19. In his memorandum dated January 27, 2018, Mr. Smith states: “A conversation took place with the Grievor about the things he did properly during the testing observation, as well as the exception noted about failing to stretch the coupling”.

20. This conversation occurred at the Yard Office, at the end of the Grievor's shift. The fact that Mr. Smith gave no pause to the Grievor to signal him immediately that he had made a violation of the Rule 113, shows that he had no worries about the Grievor's ability to operate safely for the rest of the day.

21. The Grievor was returned to service and continued working for another seventeen days until he received disciplinary notification on February 16, 2018.

22. CRO Rule 113 does not state how the "stretch" must be made. The intent of the rule is to ensure that the coupling is secure. During the investigation, the Grievor stated that the slack had adjusted which essentially is "stretching."

23. In [CROA 3998](#), slack adjustment has been accepted as a form of stretching. In that case, the Grievor was dismissed for observing a natural stretch while coupling, as opposed to stretch with engagement of the Locomotive. As in the present case, the dismissal was based on alleged violation of CRO Rule 113 and for accumulation of demerits. The Arbitrator Mr. Picher allowed the grievance and found that there had been no breach of CRO Rule 113:

The Company's representative submits that the mere observation of a natural stretch taking place during the coupling of the cars is not what is contemplated in the rule. She submits that there must be some engagement of the locomotive to exert pressure on the joint to ensure that it has properly secured. In the Company's view it is in that sense that the concept of stretching the coupling is intended to operate within rule 113(e).

The Arbitrator has difficulty with two aspects of the Company's case. Firstly, rule 113(e) makes no reference to how the stretching is to occur for the purposes of verifying that a coupling has been properly secured. The Union's representation is that it is not uncommon practice for employees to observe the movement of a single car or a small number

of cars being coupled to as a means of observing an actual stretching that verifies that the coupling is properly made. In light of those unchallenged comments, I find it difficult to conclude that there was a fundamental disregard of the requirements of CROR rule 113 by the grievor on the occasion here under examination.

Secondly, and of equal importance, is the troubling fact that there appears to have been no disciplinary attention paid to any of the other members of the grievor's crew. His conductor, who bore greater responsibility for the overall operation and who was in radio contact with the grievor at all material times, must be taken to have been equally responsible to the extent that he plainly did not hear any command from the grievor to the locomotive engineer instructing him to stretch the movement to verify the coupling. The same can be said of the locomotive engineer. It is unclear to the Arbitrator on what basis the Company decided to neither investigate nor assess any discipline against any of the other members of the grievor's crew who were equally responsible for the coupling operations being performed at that time.

(Emphasis added)

24. The Company argues that the slack adjustment as discussed in **CROA 3998** is not sufficient in cases of coupling onto a large number of cars. In the present case the Grievor was coupling on to a cut of about 30 cars.
25. There is no case law confirming the Company's allegation.
26. In its follow-up information dated January, 23, 2020, the Company addresses its argument:

To stretch out the slack—get the maximum space between the cars on the coupling made—the conductor would have needed to inform the Locomotive Engineer to “stop and stretch”.

Without the stretch movement, the required pressure is not properly applied to the knuckle to verify the coupling.

With a movement like this, stretching the coupling is not subtle. An experienced railroader, like Assistant Superintendent Smith, would have witnessed multiple things had the stretch occurred. For example, he would have seen the headend portion (the equipment coupling on to the stationary equipment) move in the opposite direction. He would have heard the Grievor ask his Locomotive Engineer to stretch. Even the noise of the head end portion moving ahead would have been instructive.

27. However, according to his own declaration, Mr. Smith was looking for slack adjustment as a means of complying with Rule 113. In his Memorandum, he states “I witnessed no slack adjust on the standing portion of the train or the headend portion.”

28. No other crew member was investigated as a result of this incident. Locomotive Engineer B. Thomas was not summoned for a formal investigation. If as the Company asserts, the Grievor was required to radio Ms. Thomas for a “stop and stretch” test upon coupling, then her role in this failure to perform such a step ought to have been subject to the investigation as well.

29. She must have been aware of the fact that a coupling was being made onto other cars and a stretch was not requested. Yet, the Company chose not to gather evidence from her on the assignment. This, coupled with Mr. Smith’s delay of six hours in raising any concern with the Grievor’s conduct, leads to the conclusion that the alleged violation was not of serious nature.

30. Had Mr. Smith had genuine and valid reason for concern as to the potential consequences of what he witnessed, he would have immediately discontinued his efficiency testing and speak to the crew.

31. For these reasons, I am not inclined to consider the Grievor's technique to be a violation of CRO Rule 113.

32. The record does not reflect any wilful misconduct or intentional derogation from adherence to Operating Rules. The Grievor did not radio Ms. Thomas for a "stop and stretch" test upon coupling as he felt that he was in compliance with CRO Rule 113. His actions were not designed to cause either harm or malice towards the Company nor himself.

33. Given the purpose and nature of efficiency testing, corrective coaching would have been sufficient to bring the message of the Company's expectation on the application of CRO Rule 113 and to draw the Grievor's attention to any potential safety hazards involved.

34. The grievor has worked for the Company for more than thirty-three years including fifteen years as a conductor. If his coupling was not what the company expected, it was up to the company to explain it.

35. The six efficiency test failures cited by the Company were only subject to verbal coaching and the majority relates to relatively minor infractions.

36. In general, the Grievor's record of thirty-three years of service reflects long periods of service without discipline. The majority of discipline assessments is generally for operational infractions and the twenty and thirty days of suspension are now pending before the arbitrator.

37. The termination of the Grievor's employment was excessive and unwarranted.

38. **NOW THEREFORE**, the CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION:

**ALLOWS** the grievance;

**CANCELS** the dismissal;

**REINSTATES** the Grievor into his employment forthwith, without loss of seniority and with compensation for all wages and benefits lost.

March 3, 2020



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**SOPHIE MIREAULT  
ARBITRATOR**