

CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4721

Heard in Montreal, January 16, 2020

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 20 day suspension of Conductor Al Blossom of Roberts Bank, BC.

THE JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Blossom was issued a 104 for the following:

“For damaging a company vehicle and failing to properly report the incident while working as a Conductor at Roberts Bank on December 9th 2017; a violation of Engine Safety Rule Book, 1. Rights and Responsibilities: Engine Safety Rule Book, T-4 Vehicles used for Company business, Rule Book for Train and Engine Employees, Section 2, Item 2.1(a)(ii), Section 2 Item 2.2(a), Section 2 item 2.2(c)(v), Section 2 Item 2.2(c)(vi), Section 2 Item 2.2(c)(viii), Section 2 item (b) 2.2(c)(x), Section 2 Item 2.3(b), GOI, Section 11, Item 6.1, GOI, Section 11, Item 6.1, GOI Section 11, Item 6.2, GOI, Section 11, Item 6.4.”

Union Position:

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding all of the allegations outlined above. The Union further contends that Mr. Blossom's 20 day suspension is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter. It is also the Union's contention that the penalty is contrary to the arbitral principles of progressive discipline.

The Union submits that Mr. Blossom was wrongfully held from service in connection with this matter, contrary to Article 39.06 of the Consolidated Collective Agreement.

The Union requests that the discipline be removed in its entirety, and that Mr. Blossom is made whole for all associated loss 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.

The Union states a violation of Article 39.06 of the Consolidated Collective Agreement. The Company maintains the nature of the offense did indeed warrant the Grievor being held out of service.

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

AWARD OF THE ARBITRATOR

THE BACKGROUND

1. On July 9, 1985, the Grievor was hired on with CP Maintenance of Way department. For the next eighteen years, he remained with the Maintenance of Way department with progressing job responsibilities on various work crews throughout B.C. and Alberta.

2. 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.

CIRCUMSTANCES GIVING RISE TO THE ASSESSMENT OF A 20 DAY SUSPENSION

1. On December 9, 2017, the Grievor was working as a Conductor with Locomotive Engineer T. Wolgram. At approximately 03:00, while driving a Company truck in BC Rail

Yard Property, the Grievor backed into a switch handle. The collision caused damage to both the switch and the company vehicle.

2. On December 20, 2017, the Grievor attended an investigation in connection with:

“The motor vehicle accident involving a CP vehicle at Roberts Bank during your shift on the morning of December 9th 2017.”

3. During the investigation, the Grievor, answering the following question, gave his version of the event:

Q16. Can you explain what happened in that incident?

A. Yes. I was backing the truck up and it was very foggy, we were travelling slowly. I was using the mirrors and trying to stay close to the water side to avoid any possible obstructions. The truck contacted the switch handle and bent the bumper and switch handle. I got out of the truck and inspected the damage to the bumper and the switch handle. Both were operational. We were out there to get a unit started. We carried on with our duties and then we reported it when we got back to the shack. Everything seemed operational and it didn't seem that serious and while I was driving home I was thinking about reporting it. I had finished work at 07:07 and I had decided I would call him and text him my report when I woke up.

(...)

4. The bumper on the truck was pushed in and the switch handle was mangled so the Grievor had to dig out the ballast or gravel underneath it to get the handle moving freely. During the investigation, the Grievor answered:

Q25. Referring to appendix F, There appears to be damage to the switch tie. Can you explain how that occurred?

A. I was digging out the pit to allow the handle to move freely.

Q26. Referring to your answer to the previous Q&A and appendix F, are you stating that the moved ballast under the switch handle was done by yourself?

A. Yes.

Q27. What device did you use to move this ballast?

A. It was a metal bar.

Q28. And that metal bar cause tie wood to be disturbed?

A. Yes, I probably missed while I was digging.

5. Between one and one and a half hours after the incident occurred, the Grievor mentioned it to BCR Supervisor Greg Carter. In a memo dated December, 12, 2017, Greg Carter detailed the conversation as follows:

Chris, on the said night regarding the switch. Al Blossom was in the CP book in room and between 04:00 and 04:30 he was at the door between the offices he said to me that he brushed the switch handle with the truck at the west end of North 1, I immediately turned away and told him I needed to call someone out. He stopped me and said oh no you don't have to the switch is fine not damaged and working find the points were good he then stated again I only brushed the handle with the truck. At no time did Al Blossom state that the truck was damaged. If the information regarding how bad the switch handle and the truck were conveyed to me I would have taken the immediate action and had someone called out.

6. During the investigation, the Grievor states about this memo of Greg Carter:

Q10. Do you wish to refute any of the evidence?

A. ... Appendix H in Greg's email "he said he brushed the switch handle with the truck at the west end of North 1", I can't remember the exact wording, I was backing the truck up and contacted the N1 switch handle and bent the switch handle and truck bumper. The switch handle was still operational and I said that I would follow up with Brandon Dalke. I thought the switch handle should be replaced but it was fine in the near term until it was replaced.

Q38. Referring to appendix H, did you saw (sic) that to Mr. Carter?

A. When I read it, it gives the impression that I was trying stop him from calling someone out. I wasn't trying to do that, I was trying to give my opinion on the situation.

Q39. Did you discuss damage to the truck with Mr. Carter?

A. Yes, I said the truck bumper was bent.

Q40. During your conversation with Mr. Carter on the morning of December 9th, did he advise you to report the incident to a CP manager?

A. I believe the way it played out was that I told Greg I would follow up with Brandon Dalke.

7. The Grievor took no further action the morning of the incident. He left work and went home.

8. Almost ten hours after the incident, the Grievor reported it to a CP Manager, Trainmaster B. Dalke. During the investigation, the Grievor states:

Q42. Can you explain why you waited 10 hours after your conversation with BCR Supervisor Greg Carter to report this incident to a CP company official?

A. I was not aware of the requirement to immediately report it. I didn't see anything that would affect productivity.

Q43. Referring to your answer to the previous question, you did not think that damage to company property and equipment needed to be reported immediately?

A. No. I reported it to Greg. I wasn't aware of the requirement to immediately follow up with a CP manager.

(...)

Q65. Did you report this incident to the RTC?

A. No.

Q66. Why not?

A. I reported it to my immediate supervisor. I thought Greg was my immediate supervisor.

(...)

Q69. Are you aware that the copy of the form your (sic) sent via text message to Brandon Dalke 10 hours after the incident is not the correct form?

A. At the time I was not aware of that but I am now.

DECISION

9. There is no dispute that on December 9, 2017, the Grievor, at approximately 03:00, backed the Company vehicle into a switch handle at the West end of track North

1. Between 04:00 and 04:30, the Grievor reported the incident to BCR Supervisor Greg Carter. He left work at 07:00 and went home to sleep. On waking up, at approximately 14:50, he reported the accident to CP Trainmaster, Brandon Dalke.

10. The Union asserts that the Company has failed to meet the requisite burden of proof in order to justify cause for any discipline in the circumstances. The Union adds that there is no cogent indication whatsoever of any dishonest conduct, deceit or delay on the Grievor's behalf. The Union holds the Company to its burden of proof, and notes that the Company is unable to discharge this onus in respect of the alleged rules at issue.

11. On its part, the Company finds the assessment of a 20 day suspension to be warranted, appropriate and even lenient in all of the circumstances for such a serious offense.

12. The Company emphasizes that by not immediately reporting incidents, especially those involving equipment damage, is a serious violation of Rules and Operational requirements. It's the Company's reasonable expectation and right to have employees report all incidents immediately, as per the rules.

13. In this case, many of the alleged violations mentioned in Form 104 are general safety rules. As for other allegations of violations, aside from the Grievor confirming his familiarity with those rules, the record does not established any support in favor of them. The real issue here is for having damaged the company vehicle and failing to properly report the incident.

14. There is no evidence that the Grievor sustained damage due to any wilful and/or intentional attempt, nor that the incident occurred in the course of any misconduct. Nevertheless, there was damage to the bumper of the truck and to the switch handle.

15. Among all the mentioned rules in Form 104, GOI, Section 11. Item 6.1, 6.2 and 6.4 states:

6.1 All employees must immediately report an accident / incident or injury that has occurred that is beyond what would be considered as normal railway operations.

Reporting procedures:

Report to the RTC, Superintendent-Operations Center Calgary or immediate supervisor.

6.2 The employee making the initial report must complete and sign the initial Incident Report form as provided by his/her immediate supervisor as soon as possible after the occurrence.

6.4 Employees are to remain at the scene of an accident until released by the RTC, their supervisor, or another person in charge at that location.

16. The Grievor advised BCR Supervisor Greg Carter of the incident at the end of his shift, which is an hour to an hour and a half after it happen. Later on, he reported it to CP manager, Brandon Dalke, ten hours after the incident occurred and not in a correct form.

17. The Company alleges that GOI Section 11, Item 6.2 requires an employee making the initial report to complete and sign the initial Incident Report form as provided by his/her immediate supervisor as soon as possible after the occurrence. It seems that the Grievor was not provided an initial "Incident Report form" by BCR Supervisor Carter nor CP Trainmaster Dalke. The Union states that, upon completion of the tour of duty, the Grievor obtained and filled out a "CP Marvin Report" and photographed it with his cell phone. He opted not to send the picture immediately to CP Trainmaster Dalke, as it was early in the morning and he did not want to wake him up.

18. BCR Supervisor Carter states that the Grievor said that he brushed the switch handle with the truck and at no time did he say that the truck was damaged. When Mr. Carter told the Grievor that he needed to call someone out, the Grievor stopped him and said *"oh no you don't have to, the switch is fine not damaged"*.

19. For his part, the Grievor says that he told Supervisor Carter that he bent the switch handle and the truck bumper. He also said that he would follow up with CP Trainmaster Brandon Dalke.

20. These versions are contradictory.
21. During the investigation, another statement, questions the Grievor's credibility when he says *"I thought Greg was my immediate supervisor"*. If he thought Mr. Carter was his immediate supervisor, why would he say that he was going to follow up with CP Trainmaster Brandon Dalke and, while he was driving home, thinking about reporting the incident to him? He would not have to do so if Mr. Carter was his immediate supervisor.
22. There are no reasons why Mr. Carter would lie and wrongly implicate the Grievor. Preference is given to his version.
23. The Company also refers to The Train and Engine Safety Rule Book, 1:
- Rights and Responsibilities
- All employees must make certain that:
- We correct unsafe conditions or protect against them and report them to a supervisor.
- Oral and written reports of accidents, incidents, including injuries, and related information are reported to a supervisor as soon as possible and no later than the end of shift.
24. The Company maintains that by not promptly reporting the incident or obtaining assistance, the Grievor could have aggravated the situation and caused greater damage to the switch. The same with the fact that the grievor should have had a qualified employee look at the switch instead of damaging it further by using a metal bar to dig out the ballast. The Company also asserts that by compromising the integrity and ergonomics

of the switch, he potentially put other employees at risk and there was the possibility that the internal components of the switch were damaged. Ultimately, this could have led to a derailment.

25. In **CROA 4061**, submitted by the Company, the grievor failed to make the Company or anyone aware when damage occurred to his machine and there were some confusion as to whether the foremen were ever advised. The Arbitrator states " *the fact remains that the grievor did not himself contact a supervisor when damage occurred to his machine*" and assessed a six month suspension. In the present case, as a mitigating factor, the Grievor himself advised BCR Supervisor Carter at the end of his shift and CP manager Dalke the next day.

26. However, the damages cause to the switch handle and the car bumper while backing up the truck, the delay to report the incident and the lack of strait forward answers during his conversation with BCR Supervisor Carter justifies a disciplinary measure.

27. The Grievor's length of service (32 years), the fact that this is the first alleged infraction in his career with regards to the operation of a Company vehicle and that it was the Grievor's first alleged infraction of any kind in seven years are mitigating factors. The Company has considered those factors (the Grievor's length of service and past discipline record) and bearing those in mind, has assessed the 20-day suspension.

28. Considering all the circumstances in this case and the argumentation submitted by the parties, the 20 day suspension assessed by the Company is maintained.

29. As for the Union allegation that the Grievor was withheld from service in violation of Article 39.06 of the Consolidated Collective Agreement :

An employee is not to be held off unnecessarily in connection with an investigation unless the nature of the alleged offence is of itself such that it places doubt on the continued employment of the individual or to expedite the investigation, where this is necessary to ensure the availability of all relevant witnesses to an incident to participate in all the statements during an investigation which could have a bearing on their responsibility. Layover time will be used as far as practicable. An employee who is found blameless will be reimbursed for time lost in accordance with sub-clauses 34.01(1), (2), and (4).

30. The damages caused by the Grievor to the switch handle and the car bumper, his delay to report the incident and his lack of candor especially during his conversation with Supervisor Carter by downplaying what had occurred and the damage that was caused could have place some doubt on his continued employment.

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

DISMISSIS the grievance.

March 12, 2020



**SOPHIE MIREAULT
ARBITRATOR**