

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

CASE NO. 4522

Heard in Montreal, December 15, 2016

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union advanced an appeal of the dismissal of Locomotive Engineer J. Reid of Brandon, Manitoba.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Following an investigation Engineer Reid was issued a letter from the Company on October 27, 2015 informing him that he was dismissed from Company service for the following reasons;

Please be advised that have been DISMISSED from Company Service as you have breached the bond of trust necessary for continued employment with the Company as evidenced by your failure to immediately report your injury and your failure to report a safety hazard on October 2, 2015 while employed as Locomotive Engineer in Brandon, MB.

Union's position: Engineer Reid sustained an injury on October 2, 2015 which he reported once he realized the seriousness of the injury. The Union contends Engineer Reid did not immediately report his injury because he thought the injury to be very minor which the Union contends is not evidence that would suggest he breached the bond of trust necessary for continued employment. The Union has conducted a search of CROA awards and found numerous cases similar in nature. CROA awards 3308, 3374, 3980 and 4401 are just a few of many examples where the Arbitrator has over turned discipline for not immediately reporting an injury.

The Union contends the discipline imposed is unwarranted, unjustified and excessive in the circumstances. Based on the evidence presented, the Union contends the record in this case does not support the issuance of the ultimate penalty of dismissal. It is further our position this wrongful dismissal constitutes a violation of Section 94 of the *Canada Labour Code*.

The Union requests that Engineer Reid's dismissal be removed from his record and that he be reinstated to his former position without loss of seniority or benefits, and made whole for all wages lost, with interest, in relation to the time withheld from Company service. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit. The Company has denied the Union's requests.

FOR THE UNION:
(SGD.) G. Edwards
 GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

D. Pezzaniti	– Manager, Labour Relations, Calgary
D. E. Guerin	– Senior Director, Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
G. Edwards	– General Chairman, Calgary
H. Makoski	– Vice General Chair, Winnipeg
J. Reid	– Grievor, Brandon

AWARD OF THE ARBITRATOR

Introduction

1. The Canadian Pacific Railway Company (CP) terminated locomotive engineer Jeff Reid on October 27, 2015 for a failure to report immediately his injury and a personal safety hazard. CP later unilaterally reinstated Mr. Reid on August 26, 2016 and replaced his dismissal with a ten-month suspension (TCRC Exhibit 2; Tab 13).
2. The Teamsters Canada Railway Conference (TCRC) contested the discipline on the basis that it was grossly unwarranted and excessive. The TCRC argued that there was no evidence to conclude that Mr. Reid, an employee with thirty-four years of service, had breached any bond of trust.
3. The arbitrator is satisfied that the termination and the substituted suspension fell well outside the realm of any reasonable level of discipline. For the reasons which follow, the arbitrator substitutes a written warning for the events of October, 2015.

Facts

4. CP hired Mr. Reid in November 1981. Other than a written warning in 2015 for missing a call to work, Mr. Reid had been discipline free for over twenty years (Company Brief; paragraph 10).
5. The events in question took place between October 2 and 4, 2015.
6. At 23:00 on October 2, Mr. Reid stepped in a gopher hole when working with conductor Drew Bertone to set off a unit. They advised the incoming crew of this event. Mr. Reid felt immediate pain and believed he may have sprained his ankle. Nonetheless, he decided he could continue to work.
7. Mr. Reid did not immediately advise a supervisor of the event. Despite his opinion of a possible ankle sprain, he did not feel initially that it was a reportable injury.
8. The next morning at 09:20, Mr. Reid informed Trainmaster Goodwin of the event and went to see a physician working at a walk-in. Mr. Reid followed up his morning call to Mr. Goodwin with an email about his medical situation (TCRC Exhibit 2; Tab 3). TM Goodwin had the gopher hole dealt with during the afternoon of October 3 (CP Exhibit 1; Tab 4).
9. Mr. Reid completed an incident report form on October 4, 2015 (TCRC Exhibit 2; Tab 7).

10. Following its investigation, CP terminated Mr. Reid's employment (TCRC Exhibit 2; Tab 10):

Please be advised that you have been DISMISSED from Company Service as you have breached the bond of trust necessary for continued employment with the Company as evidenced by your failure to immediately report your injury and your failure to report a safety hazard on October 2, 2015 while employed as a Locomotive Engineer in Brandon, MB.

Analysis and Decision

11. The arbitrator does not dispute CP's legitimate interest in having its employees report accidents promptly. Prompt reporting allows CP to ensure the welfare not only of the employee who suffered the accident, but also to take steps to prevent other employees from being injured.

12. However, CP's decision to terminate Mr. Reid on the basis, *inter alia*, of dishonesty (CP Brief; Paragraph 41), and then replace that sanction with a ten-month suspension, lacks proportionality to the factual circumstances of this case.

13. Mr. Reid did not report his accident immediately. But nothing in the evidence supports an argument that his failure amounted to a breach of any bond of trust.

14. Mr. Reid and his colleague informed another crew in the immediate vicinity of the potential danger. Mr. Reid also contacted Trainmaster Goodwin within 10 hours of the event which allowed the latter to take steps to fill in the gopher hole. Mr. Reid further completed an incident report on October 4.

15. The arbitrator is satisfied that the comments of Arbitrator Picher in CROA&DR 3308 regarding a late reporting of an accident are similarly appropriate to Mr. Reid's situation:

The real issue is the measure of discipline appropriate in the circumstances. The Arbitrator has substantial difficulty, having regard to the prejudice caused to the Company, if any, with the assessment of fifteen demerits and the resulting discharge of an employee of over twenty years' service for this infraction. In my view the registering of a written caution or warning to the grievor would have sufficed in the circumstances to apprise him of the need to faithfully report any on duty injury in a timely manner. I am therefore satisfied that a reduction of penalty to a written reprimand and the removal of the fifteen demerits assessed against Mr. Zalkowsky, coupled with certain conditions described below, is an appropriate disciplinary result in the circumstances.

16. The grievance is allowed, in part. A written reprimand will be substituted for CP's discipline. In terms of remedy, Mr. Reid shall be made whole, *inter alia*, without loss of seniority and with compensation, subject to any amounts earned in mitigation (TCRC Brief; Paragraph 16), for all wages and benefits lost.

17. The arbitrator remains seized regarding any issues arising from the above remedies.

December 16, 2016



GRAHAM J. CLARKE
ARBITRATOR