

IN THE MATTER OF AN ARBITRATION

Between

Canadian National Railway

(the "Company")

and

**International Brotherhood of Electrical
Workers System Counsel No.11**

(the "Union")

Re: Discharge Grievance of an S&C Maintainer

SOLE ARBITRATOR: Marilyn Silverman

APPEARANCES

For the Union:

Robert Church – Counsel
Lee Hooper – General Chairman
Steve Martin – Sr. General Chairman
Luc Couture – International Representative
Brad Betker – Regional Representative
The Grievor

For the Company:

Basil Laidlaw – Manager Labour Relations
Sylvie Grou – Senior Manager Labour Relations
Shawn Gervais – Manager Signals and Communications
Justin Macdonald – Senior Manager, Signals and Communications

Hearing held in Montreal on May 27, 2016. Ad-hoc matter 2016-650

AWARD

This is a discharge case. The Grievor, was dismissed by the Company on July 20, 2015 for recording work performed into a data system when he had not done the work. The Union asserts that there was no just cause for discharge and/or asserts that the penalty of discharge is excessive.

The dispute and positions of the parties is found in the joint statement of issue which reads:

DISPUTE:

The discharge of S&C Maintainer [the Grievor] on July 20, 2015.

JOINT STATEMENT OF ISSUE:

On June 17 and July 02, 2015 S&C Maintainer [the Grievor] was the subject of 2 separate investigations regarding the completion of General Instruction Testing at various locations.

These investigations resulted in [the Grievor] being dismissed from Company service on July 20, 2015 for *“inputting false GI 326 test data logs into SCIS by falsely reporting the GI tests as completed when they had not been done”* at several locations on the Allanwater Subdivision.

The Union contends that there was no just cause for discharge and that [the Grievor’s] assessed discipline was unjustified, unwarranted and/or excessive.

The Union requests that [the Grievor] be reinstated without loss of seniority, seniority rights, benefits, pension 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.

The Company disagrees and denies the Union’s request.

FOR THE UNION:

Lee Hooper
General Chairman _____

FOR THE COMPANY:

Basil Laidlaw
Manager Labour Relations _____

The Grievor worked for the Company as a Maintainer in the Signals and Communications department (“S & C Maintainer”). That department is responsible for ensuring the maintenance, repair and testing of the systems and equipment that ensure the safe

movement of trains through the rail network. The position of S&C Maintainer is a safety sensitive one and employees can work with little supervision. The role of the S & C maintainer is crucial to the safe operation of the trains as, among other things, they perform tests and inspect the signal system and the crossing protection equipment. The job involves mandatory testing and inspection, governed by the S & C General Instructions. The Company draws attention to an excerpt from those General Instructions which outlines the importance of the testing that S & C Maintainers do. It provides in part;

“Any employee failing to perform these tests, or otherwise falsifying the performance of these tests, will be considered in breach of duty.”

S&C Maintainers record their completed assignments in the Signals and Communication Information System database (“SCIS”). These entries are completed on site.

The Grievor was hired on March 11, 2013 and as of the date of his discharge had two years and four months of service. In his position the Grievor was in charge of testing, installing, maintaining and repairing equipment. From February 2015, the Grievor was responsible for working on a CN main line corridor in Northwestern Ontario. He was working in a remote area.

The specific tests at issue in this grievance are called GI-326 shunt tests. The general purpose of this test is to ensure that a bonded signal system is operating. This signal system verifies that the bonds are active. This is used to ensure that movements are clear so that a train or other moving equipment can use that location. The S&C Maintainer must ensure that bonding wires on the rails are working so that track movements can be detected and communicated. Failure to detect movements on the track can lead to collisions. To perform the test, the S&C Maintainer must place a shunt on the rails and test it. The tests are time consuming and require a methodical procedure. After the test is completed the S&C Maintainer is to enter the data logs on SCIS, which involves indicating a check mark beside the test and pressing a “complete” button. In the event of a problem the S&C Maintainer must resolve it before allowing movement on that track. This procedure

must be performed at various signal locations on various tracks and is to be completed every 3 months.

The basis of the Grievor's discharge is that he noted completion on the SCIS for work that he had not done. There is no dispute that the Grievor did not do the work and no dispute that he indicated on the SCIS that he had completed it. These facts were disclosed as follows:

In May 2015 a manager performing an audit noted that in one of the Grievor's territories the test had not been done, yet it was recorded as complete in SCIS. When questioned about this, the Grievor said he had made a mistake and was sorry. He said that he was rushed and checked off the tests without noticing. He said he performed many tests and that inadvertently he must have checked off tests that he in fact had not done.

A further audit later in May 2015 disclosed another location where the GI-326 test had not been performed by the Grievor, but had been checked off as completed. The Company conducted further audits and in the end it found five occasions in total between February 2015 and May 2015 when the Grievor completed the SCIS as work done when in fact the GI-326 test had not been done. It should be noted that there were no further occasions of this after the first time the issue was brought to the Grievor's attention.

When asked at a second investigation meeting about each of the occasions disclosed in the audits, the Grievor indicated that one of the territories was not his (although his PIN had been used for the entry into SCIS) and that he thought he had done the tests. Again he said he could not explain why the tests were not done. He expressed remorse and said this would not happen again. The Company discharged the Grievor.

The Union's main position is that the penalty of discharge is too harsh and should be mitigated because the Grievor made a mistake. The Union says that the Grievor thought he had done the tests and he had not. It asserts however that his actions did not rise to the level of falsely recording data. The Union also identified concerns with the level of training

the Grievor received; not to excuse his actions but to reinforce the Union's position that the acts were not deliberate, but rather mistaken. The Union also notes that the Grievor has a clean disciplinary record, his statements of regret and argues that the Company failed to, and should have, applied the principles of progressive discipline.

The Company characterizes what occurred as inputting false data. The Company says that this is a significant safety matter and that the Grievor works independently and must be trusted to perform his tasks. It says that the Grievor deliberately neglected to perform the tests and then knowingly falsified the results. It asserts that the severity and frequency of his actions warrant discharge.

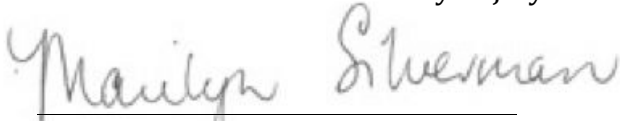
The Union relies on the decision in Ad Hoc 639 where the Grievor, also an S & C Maintainer recorded on SCIS work that he did not do. In that case, the discharge was for accumulation of demerit points. The Arbitrator found that she could not draw the legal conclusion that the Grievor falsified documents and reinstated him to employment, without compensation. The Company relies upon other jurisprudence where the penalty of discharge was upheld for falsification of records (CROA 1344, CROA 2709 and *Greater Vancouver Regional District and Vancouver Municipal and Regional Employees (MacMaster dismissal)* [1992] B.C.C.A.A.A. No. 309, 29 CLAS. 554 (Hope). In CROA 2709 the discharged employee stood at 59 demerit point at the time of the incident, had substantially more seniority than the Grievor and was a truck driver who recorded stops or deliveries that he did not make.

I am not persuaded that the Grievor simply made a mistake in both not performing the tests and then noting on SCIS that he had done them. The conduct occurred rather consistently over a period of time. The Company found five occasions where the Grievor claimed to have performed tests that he did not in fact perform. The fact is that these incidents occurred five times in five months for these specific tests suggests that this was more than mere inadvertence. That documentation required a conscious decision to check off certain portions of the database and then confirm completion of the work.

The Grievor's job was to conduct tests to ensure the safe operation of the trains on the rail system. He works independently. The consequences of not completing these tests and indicating that they were done could have serious and dangerous consequences. In these circumstances, the discharge of the Grievor was warranted.

In the result, the grievance is dismissed.

Dated at Toronto this 22nd day of July 2016.

A handwritten signature in cursive script that reads "Marilyn Silverman". The signature is written in dark ink and is positioned above a horizontal line.

Marilyn Silverman
Arbitrator