

IN THE MATTER OF AN ARBITRATION
BETWEEN
TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION
(the Union)
And
CANADIAN PACIFIC RAILWAY COMPANY
(the Company)

AH 757

DISPUTE:

Dismissal of Mr. Dominic Venditti (Union file 12-2787; Company file 13983).

JOINT STATEMENT OF ISSUE:

On March 30, 2020, the grievor was advised that he was dismissed from Company service for the following reason(s):

"For failing to identify and report to the foreman or operator of the crew that the BTMF boom was left raised in the air prior to traveling the BTMF, resulting in the destruction of an overhead signal and delaying trains on February 28, 2020 in Thunder Bay Yard, thus violating the terms of your Offer of Last Chance Continued Employment Agreement signed November 30, 2018."

Summary of Rules violated:

BOOK	SECTION	SUBSECTION	DESCRIPTION
Rule Book for Engineering Employees	2.2 WHILE ON DUTY	(a)	Safety and a willingness to obey the rules are of the first importance in the performance of duty. If in doubt, the safe course must be taken.
Rule Book for Engineering Employees	2.2 WHILE ON DUTY	(c) (vi)	be vigilant to avoid the risk of injury to yourself or others
SPC 41 M/W/ Rules & instructions	1.1 The Importance of Safety	a.	Safety is the most important aspect of any job. As a result, understanding and following safety rules and safe work practices is a condition of employment. When in doubt, employees must take the safe course of action.

SPC 41 M/W/ Rules & instructions	2.1 The Importance of Safety	c.	Employees working on or around the track must ensure that they are alert in order to keep out of danger. Supervisors must ensure that all employees receive warning of approaching equipment (a train, engine, or track unit) in time to reach a safe place in accordance with CPR rules.
Offer of Last Chance Agreement Continued	4.	n/a	Mr. Venditti shall strictly comply with all of the Company's policies and procedures and work practices including without limitation:
Employment Agreement signed November 30, 2018:			The Rule Book for Engineering Employees Engineering Safety Rule Book SPC 41 M/W Rules and Instructions Dressed and Ready Program Canadian Rail Operating Rules

The Union contends that:

1. The grievor was not operating the BTMF Truck. Another employee was responsible for stowing the Boom. The grievor sat in the middle seat of the vehicle and was unaware of the raised Boom. The Company cannot satisfy its burden of proof that the grievor violated the LCA;
2. By using this incident as justification to dismiss the grievor, the Company engaged in an unreasonable application of the LCA;
3. Other employees who were more directly involved were assessed significantly less discipline;
4. The discipline assessed the grievor was excessive, unwarranted and unfair.

The Union requests that:

The Company be ordered to reinstate the grievor into active service immediately without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

Company Position:

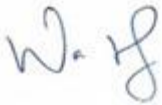
1. The Company denies the Union's contentions and declines the Union's request.
2. The Grievor signed a last chance agreement on November 30, 2018 that stipulated that he shall strictly comply with all of the Company's policies, procedures and work practices, including, without limitation: a) The Rule Book for Engineering Employees, b) Engineering Safety Rule Book, c) SPC 41 M/W/ Rules and Instructions, d) Dressed and Ready Program, and e) Canadian Rail Operating Rules.
3. On February 28, 2020, the Grievor was a member of a crew working with a BTMF truck. During their shift, the Grievor and his crew failed to identify that the boom on the BTMF truck was

raised prior to travelling which resulted in the destruction of an overhead signal. The Company maintains that every crew member was responsible for ensuring their vehicle was safe to travel prior to doing so which is confirmed by the Union in their grievance correspondence which states, "there is no dispute that Brother Venditti was involved in the incident in question".

4. Through a fair and impartial investigation, the Grievor and his crew were found culpable for violation of the Rule Book for Engineering Employees 2.2 (a) (c) (vi) and SPC 41 M/W Rules & Instructions 1.1.a. and 2.1.c. As a result, the remainder of the crew, who were not subject to the terms and conditions of a last chance agreement, received a substantial suspension for the incident.

5. In addition, the Company maintains that following a fair and impartial investigation the Grievor was found culpable for failing to comply with the terms and conditions of his last chance agreement and therefore was rightfully dismissed given the circumstances. The Company maintains that the dismissal should not be disturbed.

FOR THE UNION:



Wade Phillips
President
TCRC MWED

FOR THE COMPANY:



David Pezzaniti
Director Labour Relations
Canadian Pacific

Hearing: November 24, 2021 - By Videoconference

APPEARING FOR THE UNION:

David Brown, Counsel
Wade Phillips, President, TCRC MWED

APPEARING FOR THE COMPANY:

Diana Zurbuchen, Manager Labour Relations
Francine Billings, Assistant Director Labour Relations

AWARD OF THE ARBITRATOR

1. This is an Ad Hoc Expedited Railway Arbitration pursuant an agreement between the parties. The parties provided for submission of detailed briefs filed and exchanged in advance of the hearing. At the hearing, the parties reviewed the documentary evidence and made final argument. The parties agree I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

2. The Grievor, Dominic Venditti is a long service employee who began his employment with CP in 2008. At the time of his termination, he was on a Last Chance Agreement.

3. The grievance was referred to arbitration and the hearing commenced on November 24, 2021. At the outset of the hearing, the parties reviewed their written submissions and made opening statements.

4. Following opening statements, the parties agreed to mediate in an attempt to resolve the grievance. Unfortunately, the mediation did not prove to be fruitful. I advised the Company that I found compelling reasons for intervention. The parties agreed that I would determine the two issues in dispute during the mediation which prevented a negotiated settlement. I advised the parties that I would do so in accordance with the powers of an Arbitrator under Article 60(2) of the Canada Labour Code[2] (Code) which provides power to modify a disciplinary penalty:

(2) Where an arbitrator or arbitration board determines that an employee has been discharged or disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject of the arbitration, the arbitrator or arbitration board has power to substitute for the discharge or discipline such other penalty as to the arbitrator or arbitration board seems just and reasonable in the circumstances.

5. The parties agreed that I would issue a brief bottom line decision.

6. The Company argued that the Grievor was responsible for a serious incident. If I were to reinstate the Grievor, the Company maintained it should be without compensation and with a new three-year Last Chance agreement.

7. The Union argued that given that the Grievor was not the Boom operator, he should be reinstated with full compensation and with a shortened Last Chance agreement.

8. After carefully considering the parties' submissions, I find that the Grievor is capable of restoring his safe working relationship. I order that the Grievor be reinstated on a two-year Last Chance agreement within 30 days of this award. The Grievor will be reinstated without compensation for loss of earnings and without loss of seniority.

9. I remain seized should there be any dispute with respect to any aspect of the interpretation, enforcement or implementation of this award.

Dated this 3rd, day of January 2022.



Tom Hodges
Arbitrator