

IN THE MATTER OF AN ARBITRATION UNDER THE *Canada Labour Code, RSC*
1985, c L-2.

BETWEEN:

Teamsters Canada Rail Conference (CTY-West)

(TCRC)

-and-

Canadian National Railway Company

(CN)

Reese Harrison: 30 demerits for run through switch and resulting discharge

Arbitrator: Graham J. Clarke
Date: December 7, 2022

Appearances:

TCRC:

K. Stuebing: Legal Counsel
J. Lennie: General Chairperson TCRC-CTY Central
G. Gower: Vice General Chairperson
E. Page: Vice General Chairperson
R. Donegan: General Chairperson TCRC-CTY West, Saskatoon

CN:

A. Borges: Labour Relations Manager
M. Boyer: Sr Manager Labour Relations
S. Roch: Labour Relations Manager
S. Mumby: Assistant Superintendent EOZ

Arbitration held via videoconference on November 23, 2022.

Award

BACKGROUND

1. The parties included a Letter of Understanding in their November 26, 2019, Memorandum of Settlement which established a “Supplemental Arbitration Process” (SAP). The SAP obliged the parties to follow the rules and procedures of the Canadian Railway Office of Arbitration & Dispute Resolution¹ (CROA). The arbitrator agreed to provide 4 hearing dates in 2022 on the condition that the parties would plead no more than 2 cases per day².

2. On February 3, 2022, Conductor Harrison’s movement was involved in a run through switch incident. CN assessed 30 demerit points for the incident and terminated Mr. Harrison’s employment due to an accumulation of 70 demerit points on his record.

3. CN argued that 30 demerits was appropriate for the run through switch, especially considering Mr. Harrison’s discipline history and a previously negotiated reinstatement agreement following a 2021 termination. This was not the first time he had been involved in a run through switch incident³.

4. The TCRC, which had raised various preliminary issues during the grievance procedure, focused on the merits of the dispute and argued that the facts did not support the imposition of 30 demerit points. This was especially the case since Mr. Harrison’s crewmates only received 15 demerits each for the same event. In the TCRC’s view, the crewmates had the same, if not greater, responsibility for the switch run through.

5. For the reasons which follow, the arbitrator has decided to substitute 15 demerits for the 30 CN originally imposed and reinstate Mr. Harrison.

CHRONOLOGY OF FACTS

6. **March 5, 2018:** CN hired Mr. Harrison who, at the time of the February 3, 2022 incident, was a qualified conductor.

¹ [Memorandum of Agreement Establishing the CROA&DR](#)

² May 7, 2021 Hearing Notice.

³ Ex-2; Tab 6.

7. **August 23, 2021:** CN and the TCRC signed a reinstatement agreement after CN had terminated Mr. Harrison for a previous run through switch incident⁴. A suspension replaced the termination.

8. **February 2022:** Prior to the incident at the heart of this matter, Mr. Harrison's active discipline stood at 40 demerits, 1 suspension and 1 written reprimand⁵.

9. **February 3, 2022:** Mr. Harrison's movement ran through a switch.

10. **February 17, 2022:** CN conducted the formal employee statement for Mr. Harrison⁶. On the same day, CN also interviewed the locomotive engineer Mr. McCorquodale⁷ and engineer trainee Mr. Sarginson⁸.

11. **February 24, 2022:** CN imposed 15 demerit points for Mr. Harrison's crewmates⁹ but gave 30 demerits to Mr. Harrison for the following reason:

...your involvement in the running through north end E2\E9 lead switch while working as the conductor on Z14921-03 on February 3rd, 2022.

These 30 points led to Mr. Harrison's termination¹⁰ since his total demerits stood at 70.

ANALYSIS AND DECISION

12. CN satisfied the arbitrator that it had grounds to discipline Mr. Harrison. However, CN did not provide a satisfactory explanation why it gave twice the number of demerits to Mr. Harrison when compared with the discipline meted out to his two crewmates.

13. In AH794¹¹, the arbitrator recently examined another run through switch incident and summarized the applicable case law as follows [footnotes omitted]:

⁴ Ex-2; Tab 5.

⁵ Ex-2; Tab 4

⁶ Ex-2; Tab 19

⁷ Ex-2; Tab 20

⁸ Ex-2; Tab 22

⁹ Ex-3 TCRC Brief; Paragraph 64.

¹⁰ Ex-4; Tab 8; Page 67/131.

¹¹ [Teamsters Canada Rail Conference v Canadian National Railway Company, 2022 CanLII 95947](#)

25. First, the arbitrator in CROA 4549 concluded that a conductor deserved 15 demerit points for running through a switch and causing two cars to derail. The grievor's candour was one of the elements the arbitrator considered in reducing the penalty to 15 demerit points. Mr. Vigario, who accepted that he was in charge of the movement, did not attempt to deny his errors which led to the derailment.

26. Second, the TCRC's cases support a lower penalty than the 25 demerits CN assessed to Mr. Vigario. While there is no standard number, different awards have imposed demerits in the 10-20 range and are always based on the specific facts of the case.

As the jurisprudence the parties filed demonstrates, certain situations may warrant a penalty which exceeds the upper 20-demerit point range noted in AH794.

14. The issue of possible unequal treatment frequently arises in these types of cases when considering the discipline imposed on multiple crewmembers involved in the same incident. In [CROA 4608](#) the arbitrator commented on the differential treatment among crew members:

44. The lower discipline handed out to Conductor Lemoine and Brakeman Truong did not demonstrate unequal treatment. This Office has often differentiated discipline between crew members depending on the situation: CROA&DR 4499 and CROA&DR 4610. The conductor and the brakeman both communicated the stop signal. Their subsequent actions were not perfect, hence the imposition of suspensions, but that did not exonerate LE Madubeko from running through stop signal.

15. In the instant case, CN did not demonstrate why Mr. Harrison received twice the penalty of his crewmates. Should there have been better communication by Mr. Harrison to his crewmembers? Absolutely. When a conductor instructs the movement to come get him and he then goes in the washroom, the other crew members may assume that the nearby second switch had also been lined.

16. Similarly, Mr. Harrison should have reported the incident immediately rather than allow the movement to proceed over the switch.

17. But the Record shows that the crewmates proceeded through the unlined switch without receiving that specific instruction from Mr. Harrison. CN in its Brief does not dispute this important fact:

54. Once the blue flag had been removed and the Grievor had lined the E3 switch, the Grievor advised his crew they were lined to E3. He then instructed his crew to pick him up. At this point, the Grievor went to the bathroom without communicating any further instructions to his fellow crew members. While the Grievor was in the bathroom, the locomotive engineer moved train Z14921-03 through switch E3. However, in addition, the locomotive engineer continued the movement of the train through the next switch, E2 to E9. This switch had not been properly lined for their movement, and the Grievor had not communicated this fact to the crew members (Exhibits 19, 20, 21 and 22, pages 76-94 of 150).

...

56. Although the Grievor could visually see the E2 to E9 switch, which the Grievor acknowledged was only three to four cars ahead of the E3 switch (Formal Statement, Question 24), he failed to take any measures to line the switch. Instead, after the Grievor lined the E3 switch, he got back on the train and proceeded to use the bathroom, without providing any instructions to the rest of his crew (Exhibit 19, page 76 of 150).

18. As Mr. Lennie testified about the pictures in the Record¹², it should also have been evident to the engineers that the switch had not been lined¹³. CN did not cross-examine Mr. Lennie about this evidence.

19. The arbitrator has reviewed the jurisprudence submitted, especially [CROA 4087](#) and [CROA 3655](#). In CROA 4087, the grievor, who had already been reinstated twice, was clearly at fault for a run through switch. Similarly, in CROA 3655, the grievor, who had 55 demerit points at the time of the incident, “was in control of the RCLS Belt Pack movement when a side collision occurred with the assignment”.

20. Those awards differ from the instant situation where the engineers, who later received 15 demerits, proceeded on their own initiative and without any authorization from Mr. Harrison. That does not absolve Mr. Harrison of any responsibility. But it does call into question why CN imposed 30 demerits on Mr. Harrison.

21. In short, the Record does not disclose a sufficient reason to give double the penalty to Mr. Harrison which resulted in the loss of his employment. In the arbitrator’s view, all crewmembers deserved the same penalty of 15 demerit points.

¹² Ex-4; Page 22/131

¹³ Ex-4; Tab 6: Mr. Sarginson acknowledged this fact at QA44 of his statement when expressing his remorse about the incident.

DISPOSITION

22. While CN had cause to impose discipline, the arbitrator concludes that Mr. Harrison should have received the same penalty as his crewmates. The arbitrator orders CN to reinstate Mr. Harrison, without compensation but with no loss of seniority.

23. CN shall replace the discipline for the February 3, 2022 incident with 15 demerit points.

24. Mr. Harrison will have the opportunity, through discipline free employment, to lower the 55 demerit points which now appear on his record.

25. The arbitrator remains seized to deal with any issues arising out of this award.

SIGNED at Ottawa this 7th day of December 2022.



Graham J. Clarke
Arbitrator