

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

**CASE NO. 4765**

Heard in Calgary with Video-Conferencing, November 11, 2020

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal on behalf of Conductor Robert Seymour of Kamloops, BC, who was assessed 20 demerit points for "Arrived late for duty on October 27, 2019," and subsequently discharged for accumulation of demerits.

**JOINT STATEMENT OF ISSUE:**

On October 27, 2019, the Grievor was called as a Student Locomotive Engineer (SLE) for a deadhead by taxi at 06:20. He arrived approximately 20 minutes late, by which time the taxi with the other crew members had already departed. The Grievor went to work with a different crew later that morning.

The Grievor was required to attend a formal investigation, following which he was assessed 20 demerit points and discharged for accumulation of demerits.

The Union contends that the Grievor was delayed by circumstances beyond his control. There was no delay to train operations or the Grievor's training program, as his original crew departed on time without him and the Grievor was able to make a training trip on the next eastbound train. The Union's position is that the discipline assessed was unwarranted and excessive and should be expunged, or in any case reduced, the Grievor reinstated, and his record made whole.

The Company maintains that the Grievor has a history of attendance issues, including previous coaching and assessments of discipline. The Company's position is that the discipline assessed was progressive in nature and appropriate given the Grievor's history and the fact that he did not advise his supervisor as to his tardiness. The Company disagrees with the Union's contentions and has denied the claim.

**FOR THE UNION:**  
**(SGD.) R. S. Donegan**  
General Chairperson

**FOR THE COMPANY:**  
**(SGD.) D. Klein**  
Senior VP Human Resources

There appeared on behalf of the Company:

V. Paquet – Manager Labour Relations, Toronto  
S. Blackmore – Senior Manager Labour Relations, Edmonton

C. Bailey	– Human Resources Business Partner, Vancouver
J. Torchia	– Director Labour Relations, Edmonton
S. Grewal	– Senior Manager Engine Service, Edmonton
J. Sokolan	– Engine Service Officer, Edmonton

And on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
R. Donegan	– General Chairperson, Saskatoon
J. Thorbjornsen	– Vice General Chairperson, Saskatoon
W. McClelland	– Local Chairperson, Kamloops
R. Seymour	– Grievor, Kamloops

### **AWARD OF THE ARBITRATOR**

The grievor is 47 years old. He had just under five and half years of service at the time of his termination having been employed with the Company as a conductor since March of 2014. The grievor transferred from Canora to Kamloops in May of 2014. At the time of the incident, he was participating in a student locomotive engineer training program out of the Kamloops Yard.

On October 27, 2019, the grievor was scheduled to be on duty at 06:20 for a deadhead taxi ride from Kamloops to Blue River. He was involved in a minor traffic accident and arrived some 20 minutes late for work. The taxi had already departed at 06:30 with the remainder of the train crew, after waiting 10 minutes for the grievor.

The grievor was asked by his supervisor upon his arrival at the station why he was late for his assignment. The grievor replied that he had been in a car accident. The grievor was then instructed by his supervisor to request training from the locomotive engineer on the next eastbound train. The locomotive engineer on the next train agreed to his request

and the grievor left the station on the next eastbound train. The grievor then worked the return train back, as scheduled, to his home terminal.

The grievor explained at his investigation that he left sufficient time to get to work that morning but was rear-ended by another vehicle while sitting in his car at a red light.

He explained the circumstances of the accident as follows:

Q 7 Please explain for the record why you were late for your call for duty?

A. I left sufficient time to get to work like I always do. I was sitting at a red light at the Esso on the corner and a car hit me from behind. So I got out and assessed the damage to the truck, there was no damage and she had a cracked headlight. She didn't wish to put in a claim and was OK so she carried on.

Q. Did you call and let anyone know you were going to be late?

A. No, I at the time I didn't realise I was late. Looking back I was rattled and must have lost track of time. I did not believe I was late.

The Union submits that no discipline is warranted given the extenuating circumstances surrounding the accident, the fact that the grievor was only 15 minutes late and that the Company did not otherwise suffer any economic loss to its operations. The Arbitrator cannot agree.

Under the circumstances, the Arbitrator finds that the grievor should have called his supervisor to say he would be delayed because of the car collision. His answer at his investigation that he was "rattled" is not an acceptable excuse for his tardiness. The accident, as described by the grievor, does not suggest a traumatic incident involving excessive car damage or physical injuries, but rather only a cracked headlight amounting

to minor vehicle damage. I also accept the Company's submission that the grievor's suggestion that he "lost track of time" is more of an afterthought to try and excuse his failure to contact his supervisor that morning.

It is incumbent on running trade employees like the grievor to be on time, particularly in the railroad industry where employee adherence to their assigned schedule is vital to maintaining the Company's efficient operations. The grievor's lack of notice to his Trainmaster of the accident resulted in the crew taxi waiting 10 minutes for the grievor without knowing during that time whether the grievor would show up or not. After considering all the facts, and in particular the grievor's lack of notice to his supervisor that he would be delayed because of a car accident, I find there are grounds for discipline.

Turning to the more important issue of penalty, the grievor has accumulated an unenviable record for a relatively short-term employee. His disciplinary record at the time of his termination stood at 45 demerits. In particular, it is noteworthy that the grievor's record includes a written warning on June 24, 2018 for a missed call for his tour of duty and 15 demerits for another missed call on November 26, 2018.

Although this was the first occasion the grievor was disciplined for being late for duty, his previous discipline of missed calls indicates a pattern of inattention to his obligation of reporting to work on time, as set out in the General Notice No. 005/19. Bearing in mind the principles of progressive discipline and the grievor's overall

disciplinary record, I find that the imposition of 20 demerits for this latest incident to be appropriate.

I note that Arbitrator Picher in **CROA 3419** ordered the reinstatement, with strict attendance conditions, of a 25-year employee who had an extensive record for being late for work. The only mitigating factor that would convince me to consider a lesser penalty for this grievor under the Brown system would be similar evidence of long service. Unfortunately, this grievor does not have a comparable lengthy work history with the Company and has demonstrated an inability over his five years of employment to meet the work and attendance standards expected of an employee in his position. The Arbitrator, in the end, finds no other basis to alter the penalty of 20 demerits for this incident which led to the grievor's termination for having accumulated in excess of 60 demerits.

For all the above reasons the grievance is dismissed.

November 24, 2020



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**JOHN M. MOREAU**  
**ARBITRATOR**