

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

**CASE NO. 4768**

Heard in Calgary with Video Conferencing, November 12, 2020

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**UNIFOR COUNCIL 4000**

**DISPUTE:**

The discharge of Locomotive Hostler B. Kreller of Prince George, B. C.

**JOINT STATEMENT OF ISSUE:**

Ms. Kreller was investigated for failure to perform a proper walk around of a locomotive before it was pushed into the wash bay, resulting in damage to the wash bay door on November 22, 2019. She was working on the ground as the Hostler Helper while a colleague operated the locomotive. Subsequent this investigation, the Company assessed the grievor with 30 demerits resulting in her discharge due to the accumulation of 85 demerits on her disciplinary record.

The Union argues that despite there being two employees involved in the movement of this locomotive, Ms. Kreller as the Helper and a colleague as the Hostler, she was the only person imposed with discipline. The Union contends this to be a case of constructive discharge, of which discipline is excessive, unwarranted and arbitrary, and asks that the grievor be reinstated to service without loss of wages, benefits and seniority for the period she was discharged.

The Company maintains that Ms. Kreller accepted complete responsibility for the accident, and CN does not agree with the Union's allegations and denies the Union's grievance.

**FOR THE UNION:**

**(SGD.) B. W. Kennedy**

National Representative

**FOR THE COMPANY:**

**(SGD.) S. Blackmore**

Senior Manager Labour Relations

There appeared on behalf of the Company:

- S. Blackmore – Senior Manager, Labour Relations, Edmonton
- V. Paquet – Manager Labour Relations, Toronto
- V. James – Human Resources Business Partner, Winnipeg
- Q. Roller – Manager Mechanical, Prince George

And on behalf of the Union:

- B. Kennedy – National Representative, Edmonton
- R. Shore – Regional Representative, Langley

### **AWARD OF THE ARBITRATOR**

The grievor was first hired on January 30, 2012. She was on sick leave from March 20, 2013 until August 13, 2018. The grievor's attendance record shows that she had only two and a half years of active service at the time of her discharge. The grievor was terminated by the Company on December 4, 2019 after having accumulated in excess of 60 demerits.

The grievor began her career with the Company as an Inventory Maintainer employee. She held that position until 2019. The grievor then exercised her seniority and began training on the locomotive movement with senior Hostler's prior to qualifying as a Hostler on April 24, 2019.

The facts are not in dispute. The grievor was working in a safety-sensitive position as a Hostler helper on the shop track at the Prince George Reliability Centre ("LRC") on November 22, 2019. Her responsibilities that day included moving the locomotive power from the shop to the yard. The grievor was paired on her shift with co-worker Hostler Trong Doan who was the operator in charge of the locomotive. The grievor, at the time of the incident, was assisting from the ground as the point person with responsibility for providing for the safe movement of the locomotive.

The grievor and Mr. Doan completed their first task involving the movement of Unit 7261 without any difficulties. The second task involved connecting locomotive 2152, which was located just outside the wash bay doors and shop, to locomotive 2405.

Locomotive 2405 was located in the wash bay itself between the two wash bay doors. The two locomotive units were then to be moved south into the adjacent shop.

The grievor, for her part, first performed a walk-around inspection. The grievor stated at her investigation that Mr. Doan accompanied her during the wall-around inspection. Mr. Doan then boarded locomotive 2152. She noted after Mr. Doan was in the locomotive that the first door into the wash bay was open.

The grievor advised Mr. Doan that the derail was off, the door was up and the buzzer was on. The grievor then told Mr. Doan that he could proceed south to make the coupling to locomotive 2405 in the wash bay. Mr. Doan completed the coupling as instructed. The grievor then removed the handbrakes on locomotive 2405 and instructed Mr. Doan to move south 30 feet from the wash bay into the shop. Mr. Doan then began to shove the two locomotives forward. While doing so, locomotive 2405 made contact with the overhead wash bay door leading into the shop and caused damage to the door.

The Company did not specify the amount of damage to the door. The Union pointed out that the overhead door in question was similar to a blind and is made of a flexible rubber material. The Union submits that this is not a case where there was heavy damage to Company property.

The arbitrator rejects the Union's submission that Mr. Doan was jointly responsible for the incident. It is clear that he was following the directions of the grievor and not in a

position to observe the bay door from his position in the locomotive. The grievor was the person responsible under the circumstances for the safe handling of the moving locomotive. That responsibility is clearly set out in Module 5 of the SLO Shoptrack Locomotive Movement Guidelines as follows:

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**Shoptrack Locomotive Movement Guidelines**

- In case of doubt or uncertainty the safe course must be taken.
- Employee must be conversant with and obey the rules and special instructions. If in doubt as to the meaning they must apply to their Supervisor for an explanation.
- Employees authorized to assist in the movement of locomotives and or other rolling stock are responsible for the safe and proper handling of the equipment.

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**Coupling and Uncoupling Locomotives**

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**Couple or uncouple locomotives only when safe to do so.**

Employees assisting in movement must walk around locomotives before making any movement to make certain all personnel are clear and aware of pending move and equipment is not obstructed in any way.

The Arbitrator finds that the grievor was inattentive to her duties and failed to ensure that the overhead door was clear, contrary to her obligations under the above guidelines. The facts in this case support a finding that there is a basis for discipline. The next and more important question here is whether there is a basis to alter the penalty imposed by the Company of 30 demerits, which led to the grievor's termination of employment.

I note that the grievor was honest and forthright about her involvement in this incident. To her credit, she did indicate at her investigation that she has thought about the incident and what to do to avoid a similar incident in the future:

Q 26: Mrs. Kreller, do you have anything further to add to this statement?

A: Despite the fact that Trung [Mr. Doan] and others assisted clearing the track, as the IMU in charge of the movement, I understand and fully accept the responsibility of that movement. This is why I do a final 360 walk around after I believe it is ready to be moved. I believed at the time that the door was completely open. I distinctly remember thinking to myself that yes the door was open. I deeply regret the error of judgment and I have emulated a plan to help ensure that this doesn't happen again; by pushing the open button for safe measures, even if it appears open and if there is any doubt, ask a senior co-worker for their opinion. I take pride in my work and always strive to be better and learn from my mistakes. Incidents such as this, severely impact my being.

The grievor has unfortunately accumulated numerous demerits for prior safety violations. The Company submits that it has gone out of its way for this grievor, most recently by substituting a suspension instead of adding further to her accumulated 45 demerits for an incident on July 27, 2019 involving a safety violation of GOI 8.4 Item 1. Further, the grievor is a short service employee with just two and a half years of active service.

On the other hand, I note, that apart from her 2019 suspension, the grievor has just one written warning on her record during her most recent period of active service for failing to report an injury on July 22, 2019. Her previous record of 45 demerits were accumulated prior to her five-year absence from active duty, starting in March 2013 through to August 2018. In addition, the grievor in my view was genuine in her closing comments at her investigation when she admitted that she alone was responsible for the damage she caused to the overhead door leading into the shop. Under the circumstances, I agree with the submission of the Union that the grievor should be given

a second chance to demonstrate that she can be a useful employee of the Company and one who is attentive to her duties.

The Arbitrator directs that the Company reinstate the grievor forthwith without loss of seniority, but without compensation for any wages or benefits lost. The grievor's record shall show that the 30 demerits imposed by the Company for the incident involving damage to the wash bay overhead door on November 22, 2019 is substituted by a suspension.

November 24, 2020



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