CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4507

Heard in Calgary, November 8, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 20 demerits to Brakeman Patrick Lewis for "your involvement with the injury of Conductor Trainee Alex McCallum while working as the brakeman on train L54631-25, starting on January 25, 2015".

JOINT STATEMENT OF ISSUE:

On January 25, 2015 Patrick Lewis was working Train L54631 25 as Brakeman. During the tour of duty Conductor Trainee A. McCallum sustained an injury. The Company held the formal investigation and as a result Brakeman Lewis was assessed 20 demerits.

It is the Union submits that the Company violated Articles 82, 85, 85.5 along with Addendum 124 in this case as the Company failed to hold a fair and impartial investigation.

The Union further submits that the discipline assessed is unjustified, unwarranted and excessive given the circumstances and the discipline ought to be removed in its entirety.

The Union seeks to have the grievor made whole, exonerated for any wrongdoing and the 20 demerits assessed removed from his record given the alleged violations of the Collective Agreement. Failing that the Union seeks to have the discipline reduced to a level more in keeping with the intent and accepted administration of discipline.

The Company disagrees with the Union's position.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) J. Robbins	**(SGD.) V. Paquet**
General Chairman	**Labour Relations Manager**

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
K. Morris	– Senior Manager Labour Relations, Edmonton
A. Daigle	– Labour Relations Manager, Montreal
J. Boychuk	– General Manager Operations, Winnipeg

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Local Chairman, Port Robinson

AWARD OF THE ARBITRATOR

The grievor was the assigned to the brakeman position at Toronto South on the evening of January 25, 2015. The crew consisted of a locomotive engineer, conductor, the conductor trainee and the grievor. The crew was required to deliver two cars to a nearby customer inside the rail yard. As part of their duties that evening, the conductor and trainee made a cut on the main track, holding onto three cars, and the movement then pulled west to clear the switch. The conductor and the trainee then walked to the switch, where the grievor was located, and conducted a job briefing. It was determined in the briefing that the grievor would ride the point of the lead car while the cars were being shoved to the customer. The conductor and trainee were to walk back and then entrain on to one of the units in the locomotive consist. The details of the job briefing were not related to the engineer and he was unable to see any of the crew members from his location inside the cab of the locomotive.

After the briefing, the conductor and the trainee began walking back to the second locomotive where they planned to entrain and ride to the customer location. At the same time, the grievor took up his position on the leading car to protect the movement. Once situated on the leading car, the grievor judged his car counts and told the engineer over the radio that he was OK for eight cars and that he could start shoving. He did not look to see where his crew mates were at that time. The engineer repeated the instructions he received from the grievor and initiated movement of the train. The trainee also heard the command over his radio and was expecting the movement to start shoving as he

entrained. The trainee estimated the speed of the movement when he attempted to entrain was 2 mph.

The trainee then placed both hands on the grab irons and his left foot on the footboard. Just as he lifted his right foot up off the ground, his left foot slipped from the footboard. This caused him to fall, landing on his left leg on the ground. The conductor, who entrained ahead of the trainee, missed seeing the trainee's actual fall but saw him on the ground. He requested the engineer to stop immediately. The RTC Chief was then notified about the incident and the trainee was transported to hospital to deal with his broken leg.

The Union submits that the grievor was not given a fair and impartial hearing, claiming in that regard that "*the notice to appear was extremely vague and did not specify any alleged charges or violations in which the grievor could properly prepare to defend himself as required in article 82.1*". The Notice to Appear states that the grievor was required to attend an investigation *"... in order to provide a formal employee statement in connection with circumstances surrounding your alleged involvement with the injury of conductor trainee Alex McCallum while working as the brakeman on the train L54631–25, starting in January 25, 2015"*.

The arbitrator agrees with the Company that the grievor clearly knew from a reading of the Notice of Hearing that the subject matter of the investigation was the circumstances which led up to the injury sustained by the trainee. It is not necessary for

the Company to provide a detailed description of the incident leading to the accusations or charges against him (See **CROA&DR 2073**). The grievor knew from the Notice to Appear that he would be asked a host of questions surrounding the incident and the injury to the trainee. He answered the questions honestly and there is no evidence that he was prejudiced by any surprise questions or the manner in which the overall investigation took place. The arbitrator finds that the investigation was properly conducted pursuant to article 82.1 of the collective agreement.

Turning to the merits, the Company submits that employees assigned to a trainee must be in a position to provide continuous monitoring throughout the shift. The Company referred in that regard to Company Operating Bulletin GLD 14080 and Great Lakes Notice No. 1408-013 issued in August 2014. The Company maintains that while the grievor may not have been the employee charged with responsibility for the trainee, he still had an obligation as a fully qualified member of the crew to observe the trainee and correct errors in the actions that present a safety hazard. Further, the Company notes that the grievor did not include the engineer in the job briefing nor did he communicate his intention to entrain the equipment.

The Union states that entraining and detraining is part of the job and that the trainee was fully versed on how to perform these tasks, having already exceeded the minimum number of training trips set out at article 65A.7 of the collective agreement. The Union further submits that this was an unavoidable accident; the trainee simply miscalculated his step.

The arbitrator notes that it is undisputed that the movement was traveling 2 mph when the grievor's foot slipped off the footboard after he attempted to entrain on to the locomotive. The grievor had experience in entraining prior to the incident, having completed classroom training, boot camp and worked forty-nine training trips, which exceeded the minimum forty-five trips set out in the collective agreement. Further, employees are allowed to board moving equipment and there was no reason to believe or suspect that the trainee could not properly entrain on his own that evening.

Under GOI section 8, 12.5, employees are required to communicate their intention to entrain to the person in charge of the movement. The engineer had no idea in this case that the crew would be entraining and he further assumed that the crew were all on the point when he was told by the grievor that he could start shoving. The engineer further indicated at the investigation that he would have been in throttle 1 "just creeping" had he known the crew were about to entrain.

To say that the incident would have happened anyway, as the grievor indicated in the investigation, is an unacceptable response under the circumstances given the reasonable inference that a slower speed might have made it easier for the trainee to entrain. Further, there was a clear breach of the safety rules with the engineer being absent from the job briefing. More importantly, the engineer was never told about the crew entraining before he began shoving.

Had the safety rules been observed, I agree with the Company that the incident and injury to the trainee could have been prevented. This was not a case of inevitable accident. A reduction in the movement's speed might have facilitated entraining by the trainee and reduced the chance of a serious slip-and-fall injury, as occurred here. Indeed, the trainee himself stated at the investigation that that he was not expecting the engine to start moving as he entrained:*"...it had just started to move maybe 1 or 2 mph may have thrown me off a bit."*.

For these reasons, I find that discipline was appropriate and that an assessment of 20 demerits was reasonable under the circumstances.

December 5, 2016

JOHN MOREAU
ARBITRATOR