

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

CASE NO. 4072

Heard in Montreal, Thursday, 15 December 2011

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discipline assessed E. Santiago while employed as a Commuter Train Operator on GO 919 on April 22, 2011.

JOINT STATEMENT OF ISSUE:

Following an investigation and statement held on April 29, 2011, the Company issued three (3) separate and differing letters of dismissal for violation of CROR rules 439, 106, 34, 125 and 35. The discharge was subsequently reduced to a suspension.

The Union appealed the discipline assessed as unwarranted and, in any case, excessive. The Union maintained that the discipline was assessed beyond the time limits stipulated in the collective agreement. The Union also maintained that critical evidence was withheld throughout the investigative process.

It is the position of the Union that there was no just cause to discipline the grievor, the discipline was untimely and the investigation was not fair and impartial. Alternatively, the Union submits the penalty was excessive in all of the circumstances.

FOR THE UNION:
(SGD.) G. MACPHERSON
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) D. MACHELL
GENERAL MANAGER

There appeared on behalf of the Company:

M. Horvat	– Counsel, Toronto
A. Brown	– Manager, Human Resources, Toronto
D. Machell	– General Manager, Toronto
S. Seth	– Supervisor, Human Resources, Toronto

There appeared on behalf of the Union:

D. Ellickson	- Counsel, Toronto
G. MacPherson	- General Chairman, Toronto
E. Santiago	- Grievor

AWARD OF THE ARBITRATOR

The facts of the instant case are reviewed in **CROA&DR 4071**.

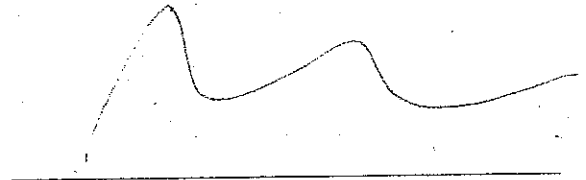
The Union objects to the timeliness of the discipline assessed against the grievor. It appears to be common ground that Mr. Santiago was not advised of his discharge, later reduced to a suspension, until more than fifty days following the conclusion of his disciplinary investigation. Article 9.1(j) of the collective agreement provides as follows:

9.1(j) Employees will not be disciplined or dismissed until after a fair and impartial investigation has been held and until the employee's responsibility is established by assessing the evidence produced. No employee will be required to assume this responsibility in their statement or statements. The employee shall be advised in writing of the decision within 20 days of the date the investigation is completed, i.e. the date the last statement in connection with the investigation is taken except as otherwise mutually agreed. Failure to notify the employee within the prescribed, mandatory time limits or to secure agreement for an extension of the time limits will result in no discipline being assessed.

For reasons it best appreciates, the Company did not respect the time limits provided in the foregoing article. As is evident from the language of the provision, its failure to notify Mr. Santiago within the mandatory time limits is to "result in no discipline being assessed."

On that basis, therefore, the grievance must be allowed. The Arbitrator directs that the grievor be compensated for any period of suspension, being made whole for all wages and benefits lost and that his disciplinary record be expunged to contain no reference to the incident of April 22, 2011.

December 19, 2011

A handwritten signature in black ink, appearing to read "MICHEL G. PICHER". The signature is fluid and cursive, with a prominent peak at the beginning and a smaller peak towards the end.

MICHEL G. PICHER
ARBITRATOR