In the Matter of an Arbitration

Between

Ottawa Central Railway

[Employer]

- and -

United Transportation Union

[Union]

And in the Matter of Pierre Belliveau

[Grievor]

Before: **M.B. Keller, Arbitrator**

Appearances: **Laurent Caron for the Employer**
Gary Anderson for the Union

Hearing in Ottawa, October 11, 2006.

AWARD

JOINT STATEMENT OF ISSUE

DISPUTE:

Appeal of the discharge of Conductor Pierre Belliveau of Ottawa, ON for the violations of CROR Rules 103 and 112 as well General Operating Instructions 7.4(b)(i) resulting in the collision of Train #441 and puncture of a tank care at Maxville, ON, on May 2, 2005.

JOINT STATEMENT OF ISSUE:

On May 2, 2005, Mr. Belliveau was employed as Conductor on Train #441. At approximately 2 a.m., Train #441 was required to set off two cars on the MacEwen siding on track XA-23 at Maxville, ON, on the Alexandria subdivision. In order to set off the cars, an initial cut of 74 cars was made. Train #441 then proceeded westward past the spur switch and then reversed the movement to set off the two cars. While doing so, the initial cut of cars rolled westward and hit the head end portion of the train causing a puncture to a denatured alcohol tank car and resulting in a spill of approximately 100,000 liters.

Following a disciplinary investigation into the incident, Conductor Belliveau was discharged for violations of CROR Rules 103 and 112 as well General Operating Instructions 7.4(b)(i) on May 2, 2005.

The Union appealed the decision of the Company to discharge Mr. Belliveau on the grounds that the penalty imposed was too severe.

The Company declined the appeal.

For the Union:	For the Company:
"Gary Anderson"	"James Allen"
Gary Anderson	James Allen
Vice-General Chairman	General Manager

On agreement of the parties this arbitration was held pursuant to, and following the rules of the Canadian Railway Office of Arbitration.

On May 2, 2005, the grievor was the Conductor on Train 441, consisting of 78 cars, six of which contained hazardous materials. While performing a two car set-off at Maxville, Ontario at approximately 0200, the grievor, "bottled the air" on the cars. This was found to be a fact by the Transportation Safety Board of Canada, and admitted by him. Within two minutes of "bottling the air" the train began to move and the leading box car collided with the tank car which was the lead car in the set off movement. The tank car, which was carrying a load of denatured alcohol, a highly flammable liquid, was punctured and started to leak. As a precaution, 200 nearby residents were evacuated at approximately 0300. The union agrees the accident was serious.

The employer alleges the grievor violated CROR 103 by intentionally blocking two public railway crossings at Maxville as well as CROR 112 and Section 7.4 of GOIs, which prohibit the bottling of air. The grievor was aware of the above.

The union challenges the severity of the penalty imposed, arguing that the discharge was unwarranted.

The union submits that the practice of "bottling the air" was common and known to the employer and condoned by them. It takes the position with respect to their knowledge and condoning the practice because of a bulleting issued by the employer with respect to a gravity drop at Pembroke. The import of the bulletin, according to the union, is that the employer was aware that crews were performing the drop, with the air bottled, at Pembroke. The union acknowledged it had no evidence, other than the bulletin dealing with the Pembroke situation, that the company was aware of any common practice elsewhere to bottle the sir.

The employer submits that it had no knowledge that there was any common practice of bottling air. It could have led evidence from two former conductors that it had not been their practice to do so, but acknowledged that it could not say other conductors did not bottle air.

With respect to Pembroke, it submitted that the situation was different, was controlled and attended, and not against the rules.

At the end of the day the question to be resolved is simple: the grievor admitted to bottling the air contrary to CROR 112. He was aware of CROR 112 and knew his actions violated the rule. Does that warrant discharge?

The union makes the argument that the practice was common and condoned by the employer. That, it argues, is a mitigating factor. It also submits that the clean record and long railroad service of the grievor must be considered. I accept the latter argument but reject the former.

It is clear that bottling air is contrary to CROR 112. There is a major, and valid, safety reason for it. It may have been the practice of the grievor as well as some others to do it but that does not mean that they should be doing it. There is no evidence the employer knew, accepted and condoned the practice. I accept the employer's explanation that distinguishes the Pembroke situation from the Maxville one.

The accident was serious. This is not contested. The Rule was violated. This is not contested. The violation of the Rule was the cause of the accident. This is not contested.

Safety is, and always must be, a paramount consideration. This can not be contested. CROA has long held that serious safety violations can not be ignored and must be treated seriously. One can not lightly put the safety of other employees and the public in jeopardy. Yet that was precisely the situation in the instant case. The deliberate Rule violation by the grievor resulted in the leakage of a flammable substance and the potential of a major explosion. It endangered the lives of over 200 people and caused their evacuation in the middle of the night. It disrupted traffic along the rail line that was blocked for a considerable period as a result of the accident.

It may have been the grievor's common practice (and might be the practice of others), but the practice comes with a risk and a potential price to the employee ignoring the rule. The risk is an accident. The price is the potential loss of employment.

After considering all the circumstances and submissions of the parties, I deny the grievance. The length of service of the grievor and his clean disciplinary record is not sufficient to mitigate the discharge. He knowingly broke a safety Rule, was aware of the reasons for the Rule and was aware that violating the Rule could result in brakes releasing and an accident resulting. While it may have been his common practice (and that of other conductors), there is no evidence the employer was aware of and condoned the practice. All of this outweighs his length of service and clean record.

In summary, I find that discipline was warranted and the dismissal appropriate in the circumstances.

Dated in Ottawa. this 17th day of October, 2006.

M.B. Keller, Arbitrator