

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2498

Heard in Calgary, Thursday, 16 June 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Appeal of the 20 demerits assessed to R.J. Gillam of Kamloops, B.C. for an unacceptable work record for the period 10 April to 16 June 1991, which resulted in discharge from Company service for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

During the period of 10 April to 16 June 1991, the grievor missed 11 calls, booked unfit for 5 days and was booked off as sick more than 48 hours without informing the Company and obtaining a medical leave of absence.

Following an investigation of the matter, the grievor was assessed 20 demerits for an unacceptable work record for the period 10 April to 16 June 1991, which resulted in discharge from Company service for accumulation of demerits.

The Union contends that there are many legitimate reasons why the grievor did not respond to calls: **1.)** The CMS did not provide accurate line up information; **2.)** On some occasions the grievor was on the place board and is not subject to being called; **3.)** On one occasion the grievor was in court protecting the Company's interests. The Union further asserts that the grievor was off sick due to a legitimate medical problem. Also, the Union contends that the grievor's discharge was severe in light of a number of mitigating factors: **1.)** The grievor's work record has improved, if looked at objectively; **2.)** The grievor has had personal problems which he has managed to overcome with the help of EAP; **3.)** The grievor has been an employee since 1978.

The Union requests that, in all the circumstances, Mr. Gillam be returned to service and that his record be made whole.

The Company maintains that the disciplinary sanctions imposed were justified and has declined the Union's request.

FOR THE UNION:

(SGD.) M. G. ELDRIDGE
for: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) G. BLUNDELL
for: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

M. A. King	– Solicitor, Edmonton
G. C. Blundell	– Manager, Labour Relations, Edmonton
B. Laidlaw	– Labour Relations Officer, Edmonton
R. G. MacDougall	– Student at Law, Edmonton
J. Gosse	– General Yard Co-Ordinator, Vancouver
J. Adamson	– Manager, Train Service, Edmonton
A. Wingrave	– Transportation Officer, Kamloops

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
J. W. Armstrong	– General Chairperson, Edmonton
L. H. Olson	– National President, UTU-Canada, Ottawa
M. G. Elridge	– Vice-General Chairperson, Edmonton
B. J. Henry	– Vice-General Chairperson, Edmonton
C. S. Lewis	– Secretary, GCofA, Edmonton
D. Gagnon	– Sr. Office Administrator, Edmonton
K. Armstrong	– Secretary, Edmonton
R. J. Gillam	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied that the Company had good reason to assess discipline against Mr. Gillam for his failure to respond to calls to work. It is clear from the uncontroverted evidence that on a number of occasions, for example, the grievor did not book off sick until he was in fact called for work.

The issue of substance is the appropriate measure of discipline. In that regard there are a number of mitigating factors to be considered. The grievor has been an employee of the Company since 1978. While he was disciplined once in 1984 for a poor work record, that problem does not appear on his disciplinary record as a recurring problem until the period between July of 1989 and July of 1991. The record before the Arbitrator establishes that during that period Mr. Gillam suffered severe personal stress by reason of problems in his personal life, the details of which need not be elaborated here. While those events do not excuse the conduct which resulted in his accumulating forty-five demerits prior to his discharge, they do place them into a mitigating perspective.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without any loss of seniority. Mr. Gillam's reinstatement shall be conditioned upon his accepting that for the period of two years following his reinstatement he shall not, within any given six-month period, register failures to respond to work at a rate in excess of the average of other employees within his classification at his home terminal. Failure to adhere to that condition shall render him liable to termination.

June 21, 1994

(Sgd.) MICHEL G. PICHER
ARBITRATOR