

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2845

Heard in Montreal, Wednesday, 9 April 1997

concerning

ST. LAWRENCE & HUDSON RAILWAY COMPANY

and

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

DISPUTE:

Appeal of Discipline, 20 demerits, assessed to the record of Mr. J.V. Seberras of Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

Employee J.V. Seberras was disciplined 20 demerits following an investigation by the Company into his work record for the period July 16th, 1994 to November 28th, 1994. That assessment brought Mr. Seberras' record to 50 demerits.

The Council has requested a reduction in discipline on the basis that the absence from work over the period of time examined by the Company was primarily due to a medical condition not readily identifiable to the grievor at the time of the absences.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. CHEHOWY
FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

H. B. Butterworth	– Labour Relations Officer, Toronto
M. Senécal-Tremblay	– Counsel, Montreal
G. Chehowy	– Manager, Labour Relations, Toronto
A. Rivest	– Road Manager, Toronto

And on behalf of the Council:

P. Sadick	– Counsel, Montreal
D. A. Warren	– General Chairman, Toronto
J. V. Seberras	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor did register an unacceptable degree of absenteeism and lateness during the period July 16 to November 18, 1994. During that time he was absent without leave for a total of twenty-one days and booked off sick, without proper documentation, an additional fourteen times. He also missed three calls without excuse during the same time period. The record also discloses that the grievor had been subject to prior discipline for timekeeping and attendance problems. In June of 1991 he was interviewed and assessed a caution for absenteeism problems. On November 5, 1991 he was disciplined for the same infraction, receiving ten demerits, discipline in respect of which he filed no grievance and for which there was no suggestion of any medical problem. He was again disciplined, to the extent of twenty demerits, on December 2, 1991, for reporting late for work, causing a delay in operations. Still later, in August of 1992 he was assessed a further twenty demerits for continued absenteeism. An additional caution was registered in September of 1993, for failing to report for duty after accepting a call, and an additional twenty demerits assessed on November 28, 1994 for absenteeism in the period July-November, 1994. Again, that discipline was not grieved and no suggestion of medical difficulty was advanced.

During the course of the disciplinary investigation the grievor provided the Company no medical explanation or documentation to excuse the absenteeism record which became the subject of this grievance. It appears that only after the assessment of discipline, during the course of the grievance procedure, did Mr. Seberras come forward with medical documentation, in the form of a letter from his family physician indicating that he had suffered from a respiratory ailment. It seems that the grievor was then referred to a specialist in allergies by his family physician. The specialist, Dr. Walter James, writes in a letter dated March 31, 1995 his opinion that the symptoms described to him by the grievor might be consistent with "recurrent posterior rhinitis and sinusitis with possible attacks of bronchitis." A later note from his family physician, Dr. M. Dutczak, advises, in part: "The patient has had symptoms of boy-friend bronchitis ... I have provided him with many certificates regarding his recurrent condition."

In the circumstances the Arbitrator has some difficulty with the position advanced by the Union, to the effect that that discipline assessed against Mr. Seberras was unreasonable, or that it should be reduced by reason of mitigating circumstances. It was plainly incumbent upon the employee to obtain proper medical certificates, and to bring those to the attention of the Company during the course of the disciplinary investigation into his recurring absenteeism. An examination of the record of the disciplinary investigation discloses no attempt on the part of Mr. Seberras to bring forward any documentation from his doctor with respect to any medical condition which might have contributed to his absenteeism. Unfortunately, the medical documentation eventually provided, after the assessment of the discipline, remains to some extent equivocal. Close examination of the letter of Dr. James indicates that the grievor's physical exam was normal, that his pulmonary function tests were normal, and that his allergy tests were negative. The doctor recommends no medication, and the tone of his letter appears to be in the nature of an opinion based on an account of symptoms related to him by the grievor. Similarly, the letter of Dr. Dutczak falls substantially short of being in the nature of a confirmed diagnosis relating specifically to the absences which are the subject of this grievance.

In the result, the Arbitrator is satisfied that the Company did have just cause to assess discipline against Mr. Seberras. Given his prior disciplinary record in respect of timekeeping, I cannot conclude that the assessment of twenty demerits was, in the circumstances, inappropriate.

For all of the foregoing reasons the grievance must be dismissed.

April 11, 1997

(signed) MICHEL G. PICHER
ARBITRATOR