

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2983

Heard in Montreal, Wednesday, 13 October 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The assessment of 10 demerits to Mr. W. Kopton (Customer Support Representative, Winnipeg) for alleged misrepresentation when booking off sick on July 4, 1997.

JOINT STATEMENT OF ISSUE:

On the morning of July 4, 1997, the grievor called in to say that he would be late for work. Approximately 30 minutes later he called in to say he was sick and would not be in. On July 11, 1997 he was served with a notice to appear for a formal investigation. Following the investigation he was assessed with 10 demerits for alleged "misrepresentation regarding booking off sick July 4, 1997."

It is the Union's position that the grievor's absence on July 4, 1997 is mitigated by an injury he sustained to his head on the morning in question. It is further the Union's position that the grievor followed the Company's instructions and procedures when booking off sick and that the grievor has been treated differently than his fellow employees in the circumstances. The Union requests the discipline assessed Mr. Kopton be expunged from his record.

The Company denies the Union's request.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) J. B. DIXON
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. G. Sherrard	– Counsel, Montreal
B. Laidlaw	– HR/LR Associate, LeVerendrye District, Winnipeg
J. Dixon	– Business Partner, Pacific District, Vancouver
A. E. Heft	– Manager, Labour Relations, Toronto
K. Markoff	– Senior Manager, Operations, CSC, Winnipeg
A. Parke-Teillet	– HR/LR Associate, CSC, Winnipeg
K. Watson	– Counsel, Montreal
D. Borowski	– Customer Support Unit Manager, CSC, Winnipeg

And on behalf of the Union:

D. Olszewski	– National Representative, Winnipeg
R. Johnston	– President, Council 4000
V. Perinot	– Witness
S. Schiewe	– Observer
W. Kopton	– Grievor

AWARD OF THE ARBITRATOR

The grievor was assessed ten demerits for misrepresentation when booking off sick on July 4, 1997. It appears that on the morning of July 4, 1997 the grievor called his supervisor, Ms. Diane Borowski, to ask permission to come to work one to two hours late. When she inquired as to why he indicated that he had slept in. She declined his request and told him to report for work. Shortly thereafter, at approximately 9:10 a.m. Mr. Kopton again called Ms. Borowski and asked to book off sick. When she reminded him that he had no sick days left he related that he had a flat tire, that he was in fact sick and would eventually produce a doctor's note.

The grievor's account of the events in question is that he travels to work by bicycle, and that upon being told by Ms. Borowski that he must come to work during their first telephone conversation, he hurried into his basement to get material to repair a flat to his bicycle, and in doing so struck his head hard against a ceiling joist, causing himself substantial injury. During the Company's disciplinary investigation of the grievor's failure to appear at work on July 4th Mr. Kopton produced a doctor's note dated July 14, 1997 indicating that the grievor had injured his head on the 4th of July, and was under medical care. The Company rejected the note as an after the fact self-serving document obtained in furtherance of a misrepresentation on the part of Mr. Kopton. On that basis it refused to believe that he was in fact injured on the day in question and assessed ten demerits for his alleged misrepresentation. Mr. Kopton submits that there was no misrepresentation, and that he did state to Ms. Borowski that he had struck his head, and would be absent because of it.

The Arbitrator is not satisfied that the grievor's evidence sufficiently establishes that the blow which he received to his head on the morning in question was such as to prevent his attendance at work, even if it meant that he would arrive late. Given the date of his doctor's note, it appears clear that there was no timely diagnosis of his physical condition, and there is no documentary evidence to support the view that he was unable, by reason of a bump to his head, to attend at work.

The evidence before the Arbitrator confirms that on previous occasions Mr. Kopton had been counselled about poor attendance and timekeeping, and had received a written reminder of his need to improve in that regard in the form of a letter dated May 28, 1996. In the circumstances I am satisfied that the Company did have grounds to conclude that the grievor exaggerated his condition on the date in question, and that contrary to his own account he was in a fit condition to work.

The grievance is therefore dismissed.

November 2, 1998

(signed) MICHEL G. PICHER
ARBITRATOR