

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3019

Heard in Montreal, Thursday, 10 December 1998

concerning

ST. LAWRENCE & HUDSON RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

The issue in dispute involves the discipline (10 demerits) issued Mr. L. Masse by notice of form 104 dated February 14, 1997

EX PARTE STATEMENT OF ISSUE:

On February 14, 1997, Mr. Masse was advised as follows;

“Please be informed that your record has been debited with 10 demerit marks for absenteeism between January 03, and February 05, 1997, as a result of 1 missed call, 7 separate occasions of booking sick, 1 personal leave day and being late for work on 1 occasion in addition to booking OK for duty when required and committed to attend a Formal Investigation on February 05, 1997, resulting in a delay to the Assignment for which you accepted the call.”

The Union's grievance is premised on the company's failure to comply with the Canada Labour Code, section 239.1 c. The protections afforded under the Labour Code recognize that the Company is obligated to question the bona fides of the grievor's illness at the time it is asserted.

Furthermore, the Union submits, the Company failed to discharge the burden of proof in this case by failing to base their conclusions, on the bare evidence in this case.

Accordingly, the Union has requested that the discipline imposed be expunged from Mr. Masse's work record. Further, that he be compensated for any loss of earning or benefits, which may have resulted from this incident.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

G. Chehowy – Manager, Labour Relations, Toronto

And on behalf of the Council:

D. A. Warren – General Chairperson, Toronto

J. Brunet – Local Chairperson, Montreal

B. Caron – Local Chairperson Elect, Montreal

L. Masse – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator directs that files **CROA 3018, 3019** and **3020** be hereby consolidated for the purposes of a single award.

For the reasons related in **CROA 3020** the grievance is allowed. The Arbitrator therefore directs that the ten demerits assessed against the grievor for his absenteeism between January 3 and February 5, 1997 be struck from his record.

December 14, 1998

(signed) MICHEL G. PICHER
ARBITRATOR

SUMMARY– CROA 3019

L. Masse discipline absenteeism missed calls booking sick see **CROA 3020** – GRIEVANCE ALLOWED

KEYWORDS – 3019

Discipline demerits absenteeism allowed

STLH – CCROU/UTU – December 10 1998 – award dated December 14 1998