

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3075

Heard in Montreal, Tuesday, 9 November 1999

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

### **DISPUTE:**

Appeal the assessment of 30 demerits which led to the discharge for the accumulation of demerits of Mr. W.E. Wowk; P.I.N. 106310.

### **BROTHERHOOD'S STATEMENT OF ISSUE:**

On October 1, 1998, Mr. Wowk was issued 30 demerits which led to his discharge for allegedly being on unauthorized absence, July 21, 22, 23 and 24, 1998; for failing to contact his immediate supervisor for his absence; and for his alleged failure to provide medical documentation in a timely manner to support his doctor appointments on July 21 and 22, 1998.

The Union contends that: **1.)** Mr. Wowk's absence for July 21, 22, 23 and 24, 1998 were not unauthorized. **2.)** Mr. Wowk did advise a Company supervisor that he had medical appointments to attend prior to being returned to work. **3.)** Mr. Wowk provided the medical documentation required, however, he was asked to leave supervisor's office before he could present it. **4.)** That the Company's assessment of discipline was unwarranted and excessive. **5.)** That Mr. Wowk was unjustly dealt with.

The Union requests that Mr. Wowk have the 30 demerits expunged from his record. The Union further requests that Mr. Wowk be made whole and fully compensated for all lost wages at punitive and pro-rata, as well as any benefits he lost. It is further requested that Mr. Wowk be reinstated with full seniority.

The Company denies the Union's contentions and declines the Union's requests.

### **FOR THE BROTHERHOOD:**

**(SGD.) R. J. LIBERTY**

**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

S. Blackmore	– Labour Relations Associate, Pacific Division, Edmonton
F. Metcalfe	– Engineering Coordinator, Edmonton
S. Michaud	– Business Partner, Human Resources, Pacific Division, Edmonton
R. MacDougall	– Counsel, Montreal

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
R. J. Liberty	– System Federation General Chairman, Winnipeg
J. Dutra	– Federation General Chairman, Edmonton
D. W. Brown	– General Counsel, Ottawa

W. Wowk

– Grievor

**AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that in fact the grievor was absent from work on July 21, 22, 23 and 24, 1998. It does not appear disputed that he advised his supervisor that he would be attending medical appointments on July 21 and 22, although it is not clear that the time involved would have necessitated his being absent for the entire day on the 22nd. I am satisfied on the material before me, however, that notwithstanding prior clear instructions to Mr. Wowk, he did not make sufficient efforts to notify his supervisor, or a suitable alternate person in management, of his absence from work on the 23rd and 24th of July, 1998. It appears that Mr. Wowk formed the opinion that contacting a MedCan kinesiologist with respect to the need for establishing a lighter duty regimen for himself, and also advising her that he was not attending at work, was sufficient notice to the Company. Plainly it was not, and the grievor knew or reasonably should have known that it was not.

It is apparent from the record before the Arbitrator that the Company has experienced some frustration in attempting to bring the grievor to an understanding of the need to be clear and prompt in his communications with the proper supervisor in the event of an inability to attend at work. In that regard certain of the grievor's comments during the course of disciplinary investigations do not inspire confidence. For example, in the investigation dealing with the grievor's absence without notice discussed in **CROA 3074**, after exploring with him obvious failures of communication on his part when asked the question "Do you see from this investigation where the problem arose regarding communications?" Mr. Wowk responded, "Yes, lack of communication from company to employee." It is also understandable that the grievor's refusal to meet with Supervisor Roberts on July 29, 1998 to discuss his work performance without a union representative might try the employer's patience.

Notwithstanding the foregoing observations, the Arbitrator is compelled to ultimately agree with the Brotherhood's representatives that the assessment of thirty demerits, resulting in the grievor's discharge, was excessive in the circumstances relating to the four days in question. Firstly, it is common ground that the grievor was then returning to work on light duty tasks, following his absence as a result of a compensable injury. It appears that the grievor's precise tasks and hours of work were to be discussed prior to his return to work along with a MedCan kinesiologist and his supervisors, something which appears not to have been done in an organized fashion when he returned to work on July 21. The Arbitrator does not accept that the grievor can ultimately justify his failure to give his supervisor advance notice of his non-attendance at work on the 23rd and 24th of July 1998, on the basis that he had conversations with Ms. Lara Bloxham, the MedCan kinesiologist, who appeared to agree with him that there needed to be a consultation with respect to his work load. Nevertheless, the evidence falls well short of establishing deliberate insubordination, reckless indifference or fraud on the part of Mr. Wowk. The fact remains, however, that he did have prior discipline with respect to his failure to give his supervisors proper notice of his absences, and therefore a reasonable degree of discipline was justified. In the circumstances the Arbitrator substitutes fifteen demerits for the discipline assessed against Mr. Wowk, and directs that he be reinstated into his employment forthwith, without compensation for wages and benefits lost, and without loss of seniority.

November 12, 1999

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**