

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3381

Heard in Calgary, Wednesday, 12 November 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Assessment of 40 demerits to Conductor R.K. Ohochinsky of Jasper, Alberta for work record irregularities.

Assessment of 30 demerits to Conductor R.K. Ohochinsky of Jasper, Alberta for work record irregularities.

UNION'S STATEMENT OF ISSUE:

Conductor Ohochinsky occupied the furlough board in Jasper Alberta from October 19, 2001 through March 15, 2002. During this five month period, Mr. Ohochinsky missed three calls and booked sick once, well within the parameters described by the Company's Attendance Management Policy.

Following an employee statement, the Company assessed Mr. Ohochinsky 40 demerits.

The Union contends that the assessment of 40 demerits is unwarranted and, in any event, excessive, and should be substantially mitigated.

The Company disagrees.

Conductor Ohochinsky occupied the furlough board in Jasper Alberta from March 15, 2002 through August 27, 2002. During this five and one-half month period, Mr. Ohochinsky missed two calls, well within the parameters described by the Company's Attendance Management Policy.

Following an employee statement, the Company assessed Mr. Ohochinsky 30 demerits and dismissal for accumulation of demerits.

The Union contends that the assessment of 30 demerits is unwarranted and, in any event, excessive and should be substantially mitigated and Mr. Ohochinsky be reinstated and compensated appropriately.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

S. Blackmore	– Manager, Human Resources, Edmonton
B. Kalin	– Superintendent – Transportation, Edmonton
R. Reny	– Sr. Manager, Human Resources, Edmonton

And on behalf of the Union:

M. Church	– Legal Counsel, Toronto
R. A. Hackl	– Vice-General Chairperson, Edmonton
W. Franko	– Local Chairperson, Edmonton

R., Thompson
R. K. Ohochinsky

– Local Chairperson, Jasper
– Grievor

AWARD OF THE ARBITRATOR

This arbitration concerns two grievances, one against the assessment of forty demerits and a second against the assessment of thirty demerits to Conductor Ohochinsky for being unduly unavailable for work while on the furlough board at Jasper, between October 19, 2001 and March 15, 2002 and, secondly, between March 15, 2002 and August 27, 2002, respectively.

As regards the first assessment of discipline for forty demerits, the evidence discloses that the grievor was called on four occasions to protect work during the five and one-half month period in question. He declined the calls to work on each occasion, on October 21 and December 20, 2001, as well as on February 4 and March 4, 2002. The only date for which he was offered any explanation is March 4th, relating that he had subscribed to a telephone company service to prevent nuisance calls, with the result that the services also blocked out calls from the Company. He also indicated that on December 20 he was in Edmonton for the surgery of a relative, and had been unable to contact anyone for a leave of absence. Given that the surgery was pre-scheduled, that excuse is difficult to accept. At that time the grievor's record stood at five demerits, albeit he had twice previously been disciplined substantially for an unsatisfactory attendance record, in 1999 and 2001.

With respect to the second head of discipline and the assessment of thirty demerits, resulting in the grievor's discharge effective August 27, 2002, the record discloses that the grievor continued to occupy the Jasper furlough board between March 15, 2002 and August 27, 2002. Notwithstanding the assessment of forty demerits against him for failing to protect work when called upon to do so from the furlough board, he maintained the same pattern of work refusal. Between March 15, 2002 and August 27, 2002, he received calls to work on April 1, 2002, April 28, 2002, and August 24, 2002. On two of those three days he once again failed to work. The grievor could give no explanation for the missed call of April 28, 2002. With respect to the August 24th date he stated that he fell asleep and missed the call.

The evidence before the Arbitrator suggests that the grievor has little or no conception of the meaning of availability and service to his employer in exchange for the receipt of wages. The fact that he has been disciplined on four occasions, garnering twenty demerits in July of 1999, twenty-five demerits in February of 2001, as well as the assessments of forty and thirty demerits which are the subject of this grievance, causes the Arbitrator substantial concern as to the possible rehabilitation of the grievor.

As stressed by counsel for the Union, as regards the culminating incident of thirty demerits, when regard is had to the Company's attendance policy, the assessment of thirty demerits and discharge is arguably extreme for missing two calls in a period of 166 days. In that regard counsel for the Union stresses that the Company's Attendance Management Policy may not in fact been violated by the grievor. He directs the Arbitrator's attention to General Notice No. 010 dated January 21, 1999 which indicates that employees may be made the subject of employee statements, and by inference discipline, for booking sick "more than once in a twenty-eight day period" or "missing two calls in a twenty-eight day period". That same document states, in part: "Furlough board employees are considered regularly assigned during their protection period as per their respective furlough board agreements and are to meet the same standards as per regular employees." The suggestion of counsel is that the grievor remained within the general rule.

However, the foregoing policy was expressly superseded by General Notice ABZ-005, issued on February 13, 2002. While that notice appears to maintain the standard for active employees that they are liable to discipline for "booking unfit and/or missing a call more than once in a thirty day period" it does not contain the previous statement to the effect that furlough board employees are to be subject to the same standards.

It is true that viewed from a certain perspective the termination of the grievor for two missed calls in a period of several months may seem harsh. Viewed from another perspective, however, the evidence discloses that the grievor, in receipt of full wages for a sustained period of time while on the furlough board, during which he did little or no work, made himself unavailable for work on 66% of the occasions he was called between March 15, 2002 and August 27, 2002. As the Company stresses, the grievor remained in receipt of full wages while occupying a furlough board position over a period of eleven months. He could then only be called during half the weeks in question. During that time he was required for duty on seven occasions, on six of which he was unavailable. That represents a

non-availability rate of 85%. When that regrettable performance is evaluated in light of his prior two assessments of twenty and twenty-five demerits, in 1999 and 2001, for unavailability and attendance problems, the Arbitrator is without any responsible basis to conclude that the grievor can be expected to change his habits in the future. Very simply, the Company has been patient, and has applied progressive discipline in a fair and measured manner in an attempt to deal with the attendance and availability problems of Mr. Ohochinsky, clearly without any positive result. In the circumstances the Arbitrator does not consider it appropriate to interfere with the Company's decision.

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

November 17, 2003

(signed) MICHEL G. PICHER
ARBITRATOR