

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3471**

Heard in Calgary, Tuesday, 8 March 2005

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

**DISPUTE:**

Assessment of thirty (30) demerits and subsequent dismissal for accumulation of demerits in excess of sixty to Conductor Dave Cook of Vancouver, British Columbia.

**UNION'S STATEMENT OF ISSUE:**

Conductor Dave Cook was required to provide an employee statement regarding his work record between April 3rd and August 11, 2002. Following his employee statement, Conductor Cook was assessed with thirty (30) demerit marks, resulting in a total of seventy-five (75) demerit marks on his record, and his dismissal from the Company.

The Union contends that while some degree of discipline may be justifiable, the ultimate penalty of dismissal is certainly not warranted given the circumstances.

The Company disagreed and has declined the Union's appeal.

**FOR THE UNION:**

**(SGD.) R. A. HACKL**  
**FOR: GENERAL CHAIRPERSON**

**FOR THE COMPANY:**

**(SGD) D. BRODIE**  
**FOR: VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. Brodie – Manager, Labour Relations, Edmonton  
R. Reny – Sr. Manager, Labour Relations, Edmonton

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
R. A. Hackl	– Vice-General Chairperson, Edmonton
J. W. Armstrong	– Sr. Vice-President, UTU Canada, Edmonton
A. W. Franco	– Vice-General Chairperson
A. Friedrich	– Local Chairperson, Vancouver
D. Cook	– Grievor

### **AWARD OF THE ARBITRATOR**

The material confirms that the grievor should be assessed some degree of discipline. This is borne out at the very least by the statements of the grievor himself to the Company. The only questions emerging, therefore, are to determine whether the penalty of discharge is appropriate and, if not, decide on the penalty to be substituted.

The grievor was aware of the Company's rules and policies. He acknowledged that at his Q. & A. He further was aware of the employer's expectations of him regarding attendance at work. This was made clear to him some 10 years earlier when he was twice disciplined for the same issue.

On the other hand, the grievor had been free of discipline for over ten years and the incidents giving rise to the discharge were related to child care responsibilities which, apparently, no longer exist. As well, while the grievor, with twelve years' seniority may not be a very senior employee by industry standards, it can not be said that he is a short service employee.

Considering the above, the case appears to the arbitrator to be one which would justify conditional reinstatement on terms which will protect the Company in the event the grievor should continue to have problems of the nature giving rise to the discharge. The penalty, additionally, must bring home to the grievor the seriousness of the situation and must make him realize that as an employee of CN he is responsible for attending at work as required. It must also be realized that, as this Office wrote in **CROA 3077** dealing with child care responsibilities:

... In the Arbitrator's view, as important as such concerns must be, they are not a valid excuse for non-attendance at work. Rather, absent extraordinary circumstances, they must be viewed as a failure on the part of the grievor to plan responsibly to allow himself to be available to fulfil his employment obligations. ...

The grievor shall therefore be reinstated into his employment, without compensation or benefits, and without loss of seniority. For the period of two years following his reinstatement, he shall maintain an average of missed calls or absences from duty no greater than the average of the employees in his classification at his terminal, calculated on any six-month period. Failure to observe that condition shall render him liable to immediate dismissal. The arbitrator retains jurisdiction. Should there be any dispute between the parties having regard to the interpretation or implementation of this award the matter may be spoken to.

March 14, 2005

**(signed) M. BRIAN KELLER**  
ARBITRATOR