

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

CASE NO. 3494

Heard in Montreal Thursday, 16 June 2005

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

Assessment of 50 demerit points to RTC B. Wills and his subsequent dismissal for an accumulation of demerit points.

JOINT STATEMENT OF ISSUE:

On October 7, 2003, RTC B. Wills was involved in three separate incidents that occurred while he was working the Mactier/Toronto Terminal desk in the Montreal Operating Centre.

After the investigation, RTC Wills was assessed 50 demerits and was dismissed from service on October 29, 2003 for an accumulation of demerits.

The Union advanced a grievance claiming that the termination of RTC Wills' employment was unnecessary. The Union contends that RTC Wills should have been offered deferred discipline. The Union further submits that Mr. Wills' medical condition played a role in the incident and should have been considered. The Union requested that Mr. Wills be reinstated into Company service with full compensation, benefits and seniority for all time dismissed.

The Company asserted that the discipline assessed the grievor was warranted and appropriate given all the circumstances and declined the grievance.

FOR THE UNION:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. HAMPEL
FOR: GENERAL MANAGER, NMC

There appeared on behalf of the Company:

- | | |
|------------|---|
| R. Hampel | – Labour Relations Officer, Calgary |
| A. Azim | – Assistant Labour Relations Officer, Calgary |
| P. Couture | – Manager, Montreal Operations |

And on behalf of the Union:

- J. Ruddick – General Chairman, Burlington
- F. Zamarripa – Local Chairman, Montreal
- B. Wills – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor did commit a number of rules infractions on October 7, 2003. The Arbitrator readily understands that the assessment of fifty demerits was seen by the employer as merited, particularly in light of certain parts of the grievor's prior disciplinary record. It is common ground that he was dismissed by the Company in 1998 and was then given the opportunity to accept deferred discipline. He had been assessed ten demerits in April of 2003 and his disciplinary record stood at fifty demerits at the time of the culminating incident.

There are, however, mitigating factors to be considered. Mr. Wills is an employee of twenty-two years' service who has demonstrated the ability to work for considerable periods of time discipline free. It appears that there were mitigating circumstances surrounding the initial termination of his service in 1998. He was then suffering from depression, being under a substantial degree of serious personal and family stress. Indeed, his transfer in Company service from Calgary to Montreal was effected to assist him in overcoming the personal difficulties he was then encountering. On the material before me I am satisfied that to some degree Mr. Wills continued to be affected by stress during the period of his service in Montreal. It is also not disputed that he was suffering from a serious ear infection at the time of the events giving rise to the discipline which is the subject of this award.

Having regard to all of the above factors the Arbitrator is satisfied that this is a case which justifies a substitution of penalty, albeit on conditions which are not prejudicial to the Company. The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, subject to a reasonable period of retraining and reorientation, without compensation for wages and benefits and without loss of seniority. The period between his termination and his return to work shall be recorded on his record as a suspension for the events of October 7, 2003 and his disciplinary record shall stand at fifty demerits.

June 20, 2005

(signed) MICHEL G. PICHER
ARBITRATOR