

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

CASE NO. 3558

Heard in Montreal Thursday, 11 May 2006

Concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

The assessment of 10 demerits against the record of Steve Rosso.

JOINT STATEMENT OF ISSUE:

On September 16, 2006, the grievor contacted the terminal at 06:10 to book ill for the day. At 07:00 the Company returned the call and advised the grievor that he was needed at work. The grievor was also advised to obtain a physician's note to explain the absence. The grievor did not report for work that day nor did he obtain a physician's note.

On September 27 Supervisor Robin Lacroix conducted a disciplinary interview of the grievor in relation to the events of September 16. That interview included specific questions and the grievor's medical condition on the date in question. On September 29, Mr. Rosso was assessed 10 demerits, in a letter from Ms. Lacroix.

The Union advanced a grievance arguing that the Company had no cause for discipline and that, in any event, if it did have cause the discipline issued was excessive and severe.

The Union also asks the arbitrator to find that the dignity and self-respect of the grievor has been injured by the Company's actions, to award a monetary penalty against the Company for violation of the grievor's human rights and to entirely vacate the discipline. Alternatively, the Union asks the arbitrator to reduce the discipline to a written reprimand.

The Company maintains its position that the absence was questionable and the illness unsubstantiated, and denied the grievance. Further, the Company argues that the Union failed to raise the issue of monetary damages during the grievance process and that therefore the issue is not properly before the arbitrator.

FOR THE UNION:

(SGD.) D. NEALE
INTERIM PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President Operations, Mississauga
R. Lacroix – Supervisor, London

And on behalf of the Union:

A. Kane – National Representative
N. M. Lapointe – Staff Representative, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor, P&D Driver Steve Rosso of London, Ontario, called in sick to his terminal at 6:10 am on Friday, September 16, 2005. His terminal supervisor, Ms. Robin Lacroix, developed suspicions as to the *bona fides* of his absence when she arrived at work. Firstly, she was aware that the grievor stood fourth highest in absenteeism in the terminal and that approximately 75% of his absences generally occurred on either a Monday or a Friday. More significantly, she was aware that that weekend in September was the occasion of an annual baseball tournament in which the grievor normally participated as a coach. Indeed, it appears that in prior years he had booked either vacation time or banked time off precisely for that purpose. According to the Company's representative, the employer did subsequently verify that Mr. Rosso's baseball team was in fact participating in the baseball tournament on the day in question.

When Ms. Lacroix reached Mr. Rosso on his cell phone, at approximately 7:00 am, she urged him to come to work as he was needed for that day. He explained that he was suffering from diarrhoea and was on his way to his mother's to obtain medication, as he was unable to find a drug store which was open. She then indicated that he must obtain a doctor's certificate to verify his condition. Mr. Rosso refused to do so.

During the course of a subsequent disciplinary interview he again confirmed that he had been suffering from diarrhoea and stomach discomfort. He explained that he declined to obtain a doctor's certificate because he knew that his doctor would simply refer him to a pharmacy and might be disturbed that he had come to the doctor's office with a minor ailment.

The Union takes serious exception to the nature of the interrogation of Mr. Rosso by the Company's supervisor. It asks the Arbitrator to make a declaration that that investigation was effectively a violation of the grievor's rights of personal privacy and dignity. I do not consider that it is necessary to go so far. I do, however, agree that the probing and cross-examining nature of the questions put to Mr. Rosso by the supervisor conducting the interview, particularly concerning the details of his illness, were more than were necessary to gain the information which the Company sought. The Company could either accept or not accept the explanations given by the grievor and proceed accordingly, as indeed it did. In fairness, however, because the grievor volunteered to discuss the nature of his ailment, and did not invoke any right of privacy, this is not a

circumstance for any formal declaration or further remedial action. The Union withdrew its request for monetary damages.

The significant issue is whether the Company was justified in requesting a medical certificate in the circumstances, and given the grievor's refusal to provide one, whether the assessment of discipline was merited, and if so to which level. Appendix G of the collective agreement plainly contemplates that medical reports may be requested upon the return to work from illness of an employee. The letter of understanding found at Appendix G reads as follows:

As discussed at the recent meetings the following is the Company's intention regarding the requesting of medical reports for return to work from illness.

Medical documentation to support a short-term absence will only be required of those individuals who have an absenteeism history or whose absence is suspect in the Company's opinion.

The request for medical support for the absence will be made in advance of the employee's return to work, preferably at the time the employee reports his/her absence.

The current practices regarding providing medical information for WCB and STD claims and where an employee's fitness for work is in question will remain unchanged.

As can be seen from the foregoing, the triggering event with respect to the right of the Company to request medical documentation is relatively subjective. It arises in a situation where the individual has an absenteeism history and, secondly, where, in the Company's opinion, the absence in question is suspect. In the Arbitrator's view both of those threshold requirements are satisfied in the case at hand. The grievor's attendance record, by his own acknowledgement, was "touch and go" in the year immediately preceding the events of September 16, 2005. He did have a record of Monday and

Friday absences and his overall absenteeism record was higher than the average. More significantly, in prior years he had absented himself precisely on the same weekend for an annual baseball tournament. I am satisfied that in the circumstances the Company's suspicion was not unreasonable, that it had legitimate concern for the grievor's prior absenteeism record and that the Company was well within its rights to demand a medical certificate for the absence in question. I cannot disagree with the characterization of the Company's representative of Mr. Rosso's refusal to obtain such a medical report as constituting a degree of insubordination.

In all of the circumstances I am satisfied that Mr. Rosso made himself subject to discipline for his refusal to provide a medical certificate when directed to do so. I am also satisfied that the assessment of ten demerits was within the appropriate range of discipline in the circumstances, and that that result should not be disturbed.

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

May 15, 2006

(signed) MICHEL G. PICHER
ARBITRATOR