

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

CASE NO. 3603

Heard in Montreal Tuesday, 9 January 2007

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Assessment of twenty (20) demerits and discharge to Conductor Tania Pastl of Kamloops, British Columbia for failure to appear at an employee statement on March 24 and March 29, 2006.

UNION'S STATEMENT OF ISSUE:

On March 21, 2006, Ms. Tania Pastl was contacted by Supervisor Mitch McAmmond and advised that she would be required to attend an employee investigation on March 24. Ms. Pastl attempted to contact her Union representative to arrange for his attendance at the statement.

On March 23, having been unable to contact her representative, Ms. Pastl advised Mr. McAmmond that she had been unable to find representation and would not be able to attend the statement of the next day. The Company, on March 24, issued a notice to appear for an investigation on March 29. The courier commissioned by the Company did not try to deliver the notice until March 27, at which time, according to the courier's records, Ms. Pastl was unavailable. She did not receive the notice to appear until after the statement was due to commence.

On March 31, Mr. McAmmond provided and deliver a written request for Ms. Pastl to attend an investigation, which she did. Following the investigation she was assessed twenty demerits and dismissed.

It is the Union's position that the Company failed to provide suitable notice of an investigation, in accordance with article 117 of agreement 4.3 with respect to the investigations of March 24 and March 29 and, as such, no discipline is warranted. Accordingly the Union requests that the discipline be expunged and Ms. Pastl be made whole.

The Company has not responded to the Union's request.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

- B. Laidlaw – Manager, Labour Relations, Winnipeg
- K. Morris – Manager, Labour Relations, Edmonton

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- R. A. Hackl – Vice-President, Edmonton
- B. R. Boechler – General Chairman, Edmonton
- M. Rutzki – Local Chairperson / Secretary, Melville
- J. Robbins – Vice-General Chairman, Sarnia

AWARD OF THE ARBITRATOR

The background facts to this grievance are set out in CROA 3602. The Union maintains that the grievor failed to provide suitable notice for both the March 24th and March 29, 2006 investigations. The relevant provision is article 117.1 of Agreement 4.3 which reads:

117.1 No employee will be disciplined or dismissed until the charges have been investigated; the investigation to be presided over by the employee's superior officer. The employee may, however, be held off for investigation not exceeding 3 days, and will be properly notified, in writing and at least 48 hours in advance, of the charges against the employee. Investigations will only be scheduled to start between 0800 and 1700 hours, at the employee's home terminal, or otherwise if mutually agreed upon between the Local Chairperson and the Company.

The Company contacted the grievor at 13:30 on March 21, 2006 by telephone to advise of the investigation at 10:00 on March 24, 2006 and that a Notice to Appear

would be sent to her by Purolator courier. The grievor left a message with the Trainmaster on March 23, 2006 indicating that she would not attend the following day because she wasn't able to obtain union representation. A Notice to Appear was sent by courier and the courier's records indicate that an attempted delivery occurred at 08:26 on March 23, 2004.

The grievor is entitled to 48 hours' written notice of the charges against her under article 117.1. The evidence is undisputed that she did not receive such written notice within the required 48 hours. The grievor, as the Union pointed out, never explicitly waived her rights to proper notice nor can she said by her conduct to have waived her rights. In that regard, her confirmation to her trainmaster that union representation was not available to her is no indication of an intention on her part to waive the requirement that she receive 48 hours' notice in writing. The allegation of the Company that the grievor did not appear as required for the March 24, 2006 investigation fails on the basis that the Company did not adhere to the 48 hour notice requirement set out in article 117.1.

The Notice to Attend for the second investigation scheduled for March 29, 2005 was couriered on March 27, 2006. Delivery of this second Notice to Attend was attempted, according to the courier tracking document, at 0834 on March 27, 2005, well within the 48 hour requirement. According to the courier records, the package was then available for pickup at the courier's offices.

The grievor stated at her investigation that she never refused a Purolator delivery nor was she ever made aware at any time of any notice to pick up a Purolator package. There is simply insufficient evidence before me to draw an inference otherwise. The only evidence before me of service of the Notice to Attend, as the Union points out, is the courier tracking document which states that there was an attempted delivery and there was something available for pick up. That is simply insufficient evidence from which to draw a reasonable inference that the grievor received 48 hours of advanced notice of the need for her to appear at the investigation and answer the charges against her.

The grievance is allowed. The result in this case, however, has no effect on the grievor's employment status. The grievor has already accumulated in excess of 60 demerits and consequently lost her employment as a result of the rejection of her grievance in **CROA 3602**.

January 29, 2007

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR