

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

CASE NO. 3618

Heard in Edmonton, Tuesday, 12 June 2007

concerning

CANADIAN PACIFIC RAILWAY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Grievance advancing the appeal of discipline assessed to Conductor Richard of Thunder Bay who was issued 20 demerits for booking sick when not sick on December 30, 2005 and who was withheld from service by order of a Company officer from December 30, 2005 to January 25, 2006.

JOINT STATEMENT OF ISSUE:

Following formal statements on January 16 January 26, 2006, Conductor Richard was issued 20 demerits on February 3, 2006. The discipline issued to Conductor Richard was related to the allegation that she booked sick when she was not actually sick on December 30, 2005.

On December 30, 2005, Conductor Richard arrived at work for an assignment on yard service. Approximately one half hour later Conductor Richard presented herself in a local manager's office demonstrating and reporting that she was not in a condition to continue working and that she was booking sick. The manager, Mr. Albanese, did not dispute or contest the appropriateness of her booking off sick and made arrangements to call another employee. Conductor Richard attempted to book on to the working list on January 2, 2006, but was unable to do so and was advised that she was held off the working list by order of a local Company manager, Mr. Brad Thiede.

On January 20, 2006, Conductor Richard attended her physician who completed a company medical report. This report was provided to CPR Chief Medical Officer on January 20, 2006 and Conductor Richard was returned to active service on January 25, 2006. The Union submits that the employer has discriminated against Conductor Richard on the grounds of a medical disability.

The Union's position is that the Company has not met the burden of proof necessary to justify formal discipline, the Company violated the provisions of the collective agreement with respect to a fair and impartial investigation and that Conductor Richard has been withheld from service without pay in violation of the collective agreement.

The Union seeks removal of the discipline and that Conductor Richard be made whole for all lost wages, mitigation of discipline or such remedy as the arbitrator should see fit.

The Company has declined the grievance.

FOR THE UNION:

(SGD.) D. W. OLSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. HAMPEL
FOR: ASSISTANT VICE-PRESIDENT

There appeared on behalf of the Company:

C. Ayotte	– Labour Relations Officer, Calgary
R. Hampel	– Manager, Labour Relations, Calgary
J. Anderson	– Yard Manager, Calgary
B. Thiede	– Manager, Operations, Calgary

And on behalf of the Union:

M. S. Church	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
D. S. Finnsen	– National Vice-President, Calgary
D. Roberts	– Local Chairman,
C. Richard	– Grievor

AWARD OF THE ARBITRATOR

Having reviewed the evidence the Arbitrator is satisfied that the grievor was suffering personal stress when she booked off work early in her tour of duty on December 30, 2005. By the account of Yard Manager Jeff Albanese, recorded in a memo dated December 30, 2005, when Ms. Richard entered his office to indicate that she was booking off sick because she felt “too stressed out to work” she was in fact visibly agitated and sobbing. The Arbitrator accepts the account of the grievor that she was upset because her Union steward had met with her to discuss the procedure to be followed in respect of the Company’s handling of her alleged wrongful absenteeism over a period of eight months. As confirmed in **CROA&DR 3617**, she had in fact suffered a heavy rate of absenteeism by reason on two separate medical conditions experienced in that eight month period.

The Arbitrator must reject out of hand the suggestion made by the Company that in fact the grievor simply sought an excuse to book off for the New Years’ weekend, along with her husband, who was also an employee. Whatever the employer may suspect, a board of arbitration, which must function as a court of record under the **Canada Labour Code**, does not have the luxury of converting suspicion into legal conclusions with substantial disciplinary consequences.

In the result, the assessment of twenty demerits against the grievor must be expunged from her record. The Union also maintains that Ms. Richard should be compensated for having been placed out of service by her supervisor pending medical confirmation that she was fit to return to work. With that submission the Arbitrator cannot agree. It is not unreasonable for the Company to be concerned that an individual in a safety sensitive position who claims an inability to work in that position by reason of stress has in fact overcome that condition and is able to safely return to work. The requirement placed upon the grievor as a condition of her return to work was not unreasonable, and need not have been difficult to satisfy. The fact that Ms. Richard waited until January 28 to return to work with the appropriate medical documentation is not a delay which can be blamed upon the Company. The request for compensation is therefore denied.

The grievance is therefore allowed, in part. The Arbitrator directs that the twenty demerits assessed against the grievor be removed from her record forthwith.

June 18, 2007

(signed) MICHEL G. PICHER
ARBITRATOR