

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

CASE NO. 3633

Heard in Montreal, Thursday, 13 September 2007

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

Concerning time held out of service pending the formal investigation and 25 demerits assessed Mr. Vince Rody for failing to maintain a safe and adequate level of alertness, attentiveness and vigilance by sleeping in a safety critical area of train movement and around heavy equipment while working in the Winnipeg Intermodal Yard.

JOINT STATEMENT OF ISSUE:

On April 20, 2007, a statement was taken from Mr. Rody pursuant to article 23.2 of the collective agreement concerning his work performance and allegedly sleeping in a yard truck during his shift of April 18, 2007. Mr. Rody was assessed with fifty-five (55) demerits and time held out of service for failing to maintain a safe and adequate level of alertness, attentiveness and vigilance by sleeping in safety critical area of train movement and around heavy equipment while working in the Winnipeg Intermodal Yard.

Mr. Rody's discipline was later revised to twenty-five (25) demerits and he was to be paid for all time held out of service following the formal investigation.

Mr. R. Doherty, Regional Bargaining Representative of the Union appealed the Company's decision arguing that the grievor was never asleep during his shift and as such discipline assessed Mr. Rody should be expunged from his record and that he should be compensated for all time held out of service.

The Company denies the Union's contentions and claim.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) R. CAMPBELL
MANAGER LABOUR RELATIONS

There appeared on behalf of the Company:

R. Campbell	– Manager, Labour Relations, Winnipeg
R. Anderson	– Trainmaster, Symington Yard
D. Brodie	– Manager, Labour Relations, Edmonton
A. de Montigny	– Sr. Manager, Labour Relations, Montreal

And on behalf of the Union:

D. Olszewski	– National Representative, Winnipeg
V. Rody	– Grievor

AWARD OF THE ARBITRATOR

Having reviewed the evidence the Arbitrator is satisfied that the Company is correct in its conclusion that on the midnight shift of April 18, 2007 the grievor was observed by Trainmaster Randy Anderson as being asleep while sitting in his truck adjacent to a stationary train in the Intermodal yard. The record discloses that Trainmaster Anderson drove directly toward Mr. Rody's parked truck, with the headlights of both vehicles being on, and that he stopped his truck adjacent to the grievor's vehicle. With the two gentlemen then some ten feet apart, Mr. Anderson observed Mr. Rody to be seated in the driver's position with his head back and cocked slightly to the left, with his eyes closed. Significantly, in the Arbitrator's view, there was then no reaction on the part of Mr. Rody to acknowledge Mr. Anderson or to give him any kind of wave or signal. I find it implausible that a person whose parked vehicle was so approached by another, with the approaching vehicle stopping adjacent, would not at least face the driver of the oncoming vehicle or make some attempt at acknowledging or waving to the driver of that vehicle. On the whole, I am satisfied that the account of events given by Mr. Anderson is reliable and correct.

That does not necessarily mean that the grievor has deliberately attempted to mislead. It may well be that, having briefly nodded off, he was simply not aware that he had done so. From that perspective, his denial of having slept may be something less than an attempt to deliberately mislead the Company.

The record also indicates that with twenty-one years of service Mr. Rody has an extremely positive record, having been disciplined only twice, for five demerits on each occasion, over all of those years. In the circumstances, the Arbitrator is inclined to conclude that the assessment of twenty-five demerits is outside the appropriate range for an employee of his quality. In my view, fifteen demerits would amply serve to convey to Mr. Rody the importance of not falling asleep during the course of a tour of duty in the future.

The grievance is therefore allowed, in part. The Arbitrator directs that fifteen demerits be substituted on the grievor's record for the incident of April 18, 2007. It is common ground that the grievor has ultimately suffered no loss of earnings in relation to this incident, and an order for compensation is therefore not necessary.

September 17, 2007

(signed) MICHEL G. PICHER
ARBITRATOR