

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

**CASE NO. 3650**

Heard in Calgary, Tuesday, March 11, 2008

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Appeal of the assessment of 20 demerits to [Employee X] for alleged excessive absenteeism and unprofessional conduct.

**UNION'S STATEMENT OF ISSUE:**

[Employee X] was investigated in connection with his "work history from ...." Following this investigation, the Company issued 20 Demerits for alleged "inappropriate behaviour" in connection with alleged excessive absenteeism and circumstances of booking sick.

The Union contends that the events leading to the assessment of 20 demerits are non-culpable and entirely attributable to [Employee X]'s health condition. The Union contends that due to his poor health [Employee X] was unable to work all of his calls. The Union contends that the discipline assessed is unjust because [Employee X] was medically incapable of meeting normal work attendance requirements and was medically incapable of fully appreciating the adverse consequences his medical condition had on his work. The Company was aware of his health condition at all relevant times. [Employee X] had already been disciplined for his attendance record with the issuance of a performance letter. In the circumstances, the Union contends that the discipline assessed is unjustified, unwarranted and excessive. The Union contends that the Company's disciplinary response to [Employee X]'s health-related absences breaches the collective agreement, the *Canadian Human Rights Act* (including its duty to accommodate) as well as the Company's Attendance Management Policy.

The Union requests that the discipline assessed to [Employee X] be removed in its entirety and that he be made whole, including interest, or, in the alternative, a lesser penalty be substituted as the arbitrator sees fit.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**(SGD.) D.R. ABLE  
GENERAL CHAIRMAN**

There appeared on behalf of the Company [among others] :

C. Ayton – Labour Relations Officer, Calgary  
R. Wilson – Assistant Vice-President, Industrial Relations, Calgary  
R. Hampel – Counsel

And on behalf of the Union [among others] :

M. Church – Counsel, Toronto  
D. Able – General Chairman, Calgary  
Employee X – Grievor

At the request of the parties the hearing was adjourned. By letter dated 30 September 2008, the parties advised the Office that the matter had been resolved.