

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

**CASE NO. 3651**

Heard in Calgary, Tuesday, March 11, 2008

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Appeal of 20 Demerits assessed [Employee X] for alleged conduct unbecoming.

**UNION'S STATEMENT OF ISSUE:**

Following these investigations the Company issued 20 Demerits for alleged "inappropriate behaviour" in connection with allegedly "failing to follow proper protocol regarding absences from work ... and his inappropriate communications with a Company officer ...".

The Union contends that the investigation was not conducted in a fair and impartial manner [as] per the requirements of [the] collective agreement. The Union further contends that there is no cause for discipline in the circumstances or, in the alternative, that the assessment of 20 Demerits is excessive.

The Union contends that the alleged circumstances leading to the assessment of 20 demerits are non-culpable and entirely attributable to [Employee X]'s health condition.

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.