

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

**CASE NO. 3669**

Heard in Montreal, Thursday, 10 April 2008

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the termination of Conductor Jason Burke effective July 25, 2006.

**JOINT STATEMENT OF ISSUE:**

On July 25, 2006, Conductor Burke's employment was terminated by the Company for allegedly submitting a fraudulent wage claim on or about June 7, 2006.

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the collective agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety and Conductor Burke be made whole.

The Union further contends that there is no cause for discipline in the circumstances or, in the alternative, that the penalty of discharge is excessive.

The Union requests that Mr. Burke be reinstated without loss of seniority and benefits and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**FOR THE COMPANY:**

**(SGD.) D. OLSON**

**(SGD.) A. AZIM**

**GENERAL CHAIRMAN**

**FOR: ASSISTANT VICE-PRESIDENT**

There appeared on behalf of the Company:

A. Azim	– Manager, Labour Relations, Calgary
R. Hampel	– Legal Counsel
B. Thiebe	– Manager Operations, Coquitlam
J. Dorais	– Labour Relations Officer, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
D. Roberts	– Local Chairman,
S. Kovacs	– Past Local Chairman
J. Burke	– Grievor

### **AWARD OF THE ARBITRATOR**

The grievor, Conductor Jason Burke, was discharged for making a false wage claim. It is significant, however, that the wage claim which he made was by a computer entry which, by its very nature, would ensure that his claim would be reviewed by an analyst. It is not disputed that in the end, he did not receive any wages for the claim made.

The Union alleges that there were irregularities in the conduct of the investigation which led to the grievor's discharge. In particular, its counsel stresses that the investigating officer was involved in formulating Question and Answer 77 to the investigation, which is essentially an admission of wrongdoing on the part of the grievor. On the whole of the evidence, including the account of the investigating officer and that of the Union officer in attendance, the Arbitrator is satisfied that while the involvement of the investigating officer in preparing the answer in a typed form is unusual, there was no coercion or undue influence brought to bear, as indeed it appears that the idea of formulating an answer was something that had been discussed relatively equally as between the investigating officer and the Union's representative. Most importantly, I am satisfied that the admission made by the grievor in that statement is accurate. The Arbitrator expressly finds that there was no violation of the requirement to provide a fair and impartial investigation, on the particular facts disclosed. Nor was the handling of item #7 inappropriate in all of the circumstances.

The only real issue before the Arbitrator is whether the employability of Mr. Burke has reached the point where it can no longer endure. I am not persuaded that that is so. As convoluted as the facts before the Arbitrator may appear, there are certain points to be stressed. Firstly, the wage claim code which the grievor utilized was one which he knew would attract close analysis of his claim, something which in fact occurred. While it may be that he saw his attempt to claim as falling within a grey area in which the merits of his claim were doubtful, his actions fell short of a course of action of manipulation and concealment of the facts from his employer. Secondly, the Arbitrator cannot disregard the fact that during the course of the investigation Mr. Burke did "come clean" as reflected in Question and Answer 77. While his disavowal of parts of that statement at the arbitration may have been prompted by his own memory and the passage of time, and the possible value of a legal challenge to the investigation process, on the whole I am satisfied that he appreciates the error of what he did and that he would not repeat that error in the future, having been out of his work for close to two years as a result of these events.

In the result, the Arbitrator determines that this is an appropriate case for reinstatement, albeit without compensation, on the understanding that any future discipline of this nature would be most serious for the grievor. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost and without loss of seniority.

April 14, 2008

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**