

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3693**

Heard in Montreal, Thursday, 11 September 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Concerning the assessment of 20 demerits to the record of Mr. Charles Delaney for failure to present for assigned shift from 04:00-12:00 on Monday August 6, 2007, which resulted in his discharge effective September 1, 2007, for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

The grievor is a composite employee at Moncton. His regular shift is from 04:00 am to 12:00 noon. On August 6, 2007, a statutory holiday, the grievor did not report for his assigned shift. The grievor was investigated and 20 demerits were assigned to his record.

The Union contests the 20 demerits issued to Mr. Delaney. The Union submits that Mr. Delaney asked for the day off approximately three weeks in advance. According to the Union, Mr. Delaney received no answer and denies seeing the notice posted on August 1, 2007. The Union submits that Mr. Delaney believed that since he had previously taken statutory holidays off, without question, he could do so in this instance. Notwithstanding that, the Union submits that there appears to be a miscommunication between the grievor and Supervisor Mackay. In the circumstances, the Union considers dismissal to be exceedingly harsh and given the grievor's long service mitigation must be considered.

The Union requests that the 20 demerits be removed from Mr. Delaney's file, and that Mr. Delaney be reinstated with full compensation and benefits.

The Company disagrees.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) S. GROU
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

- S. Grou – Manager, Labour Relations, Montreal
- F. O'Neill – Manager, Labour Relations, Toronto
- C. MacKay – Sr. Terminal Coordinator, B.I.T.

And on behalf of the Union:

- D. Olshewski – National Representative, Winnipeg
- G. Green – Local Chairman,

AWARD OF THE ARBITRATOR

Twenty demerits were assessed against the grievor's record for failure to attend at work on a statutory holiday for which he was scheduled, Monday August 6, 2007. The evidence indicates that a considerable time in advance of the holiday the grievor spoke with his supervisor, Ms. Carrie MacKay, indicating that he wished to take August 6 holiday off in order to have a long weekend. Ms. MacKay indicated to him at that time that his ability to take the day would depend on operational needs. It does not appear disputed that in the past he had been granted such holidays, and that the message from his supervisor was that there could be no guarantee that he would get this one.

The record further discloses that, in accordance with the collective agreement, a notice was posted on August 1, 2007 indicating that employees would be required to work their regular shifts on August 6, 2007. As indicated above, the grievor failed to do so.

During the course of the subsequent investigation Mr. Delaney explained that he had asked Ms. MacKay for the day off and having had no reply from her he assumed that his request was granted. In the Arbitrator's view that response is sharp practice at

best, implausible at worst. The grievor knew, or reasonably should have known, that the notice to all employees indicating that they were required to work on August 6, 2007 was posted prominently in the workplace from and after August 1, 2007. The Arbitrator finds the grievor's statement that he failed to see the notice to be less than credible.

In the circumstances, bearing in mind that the grievor's record stood at fifty-nine demerits, subject to the assessment of ten demerits for yet another infraction (see **CROA&DR 3692**) I am satisfied that the Company had just cause to assess discipline against the grievor and that the twenty demerits was within the reasonable range of appropriate penalty.

For the foregoing reasons the grievance is dismissed.

September 15, 2008

(signed) MICHEL G. PICHER
ARBITRATOR