CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3751

Heard in Montreal, Thursday, 16 April 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The assessment of 25 demerits for with respect to her work record and resultant termination of Roberta Strachan for accumulation of demerits in excess of 60.

UNION'S STATEMENT OF ISSUE:

Roberta Strachan was a yard employee in Vancouver during the period of March 16 through May 21, 2007. During this period of time, the Company observed what they considered to be deficiencies in Ms. Strachan's work record.

The grievor was required to provide an employee statement with respect to this period of time, following which, she was assessed 25 demerits, resulting in her dismissal for accumulation of demerits in excess of 60.

The Union contends that there were sufficient mitigating factors present that make the assessment of 25 demerits and dismissal of the grievor excessive and that a lesser penalty ought to be substituted.

Additionally, the Union contends that Company records improperly reflect an assessment of 15 demerits that were never issued to the grievor. Accordingly, the total demerits attributed to the grievor should be less than that actually reflected and the Company ought to be prohibited from relying on these 15 demerits in assessing the instant 25 demerits in a progressive manner.

The Company contends that the grievor has displayed complete disregard for her employment obligations and that the discipline assessed is appropriate in all the circumstances arid has declined the Union's grievance.

FOR THE UNION:

(SGD.) R. A. HACKL
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

F. O'Neill	– Manager, Labour Relations, MacMillan Yard
R. A. Bowden	– Manager, Labour Relations, MacMillan Yard

And on behalf of the Union:

D. Ellickson – Counsel, Toronto
B. R. Boechler – General Chairman, Edmonton
R. A. Hackl – Sr. Vice-General Chairman, Edmonton
R. Strachan – Grievor

AWARD OF THE ARBITRATOR

This case involves the assessment of 25 demerits as a result of the grievor's irregular attendance at work for the period March 16, 2007 to March 31, 2007 and, for being absent without leave from April 30, 2007 until she was removed from service on May 18, 2007. The grievor was assigned to the 19:05 Brownsville assignment, for the period April 30, 2007 to May 3, 2007.

The grievor booked off sick on March 16, 2007 at 03:05 hours. Her work record indicates that she went on AWOL status on March 17, 2007. Her explanation for the March 17th absence was that she was still sick. The records indicate that the grievor booked back on duty on March 20th. On March 21st at 05:55 the crew office called her five times for an assignment but the grievor missed the calls. Her explanation for her actions in that regard was that she was still sick. The grievor then booked off sick again at 19:11 on March 21st and stated at her interview that she provided a doctor's note to the Company for that absence.

The grievor confirmed that she called the Operations Centre Coordinator on April 27, 2007 to advise that she would probably be unable to cover her shift for Monday and Tuesday April 30th and May 1st. The Operations Coordinator stated in a memorandum that the grievor called him on April 27th to say that she was in Prince George and would not be able to make it back to work for Monday April 30th because her family rental property in Prince George needed work. The grievor was advised by the Operations Coordinator to apply for a leave of absence because she had used up all her PLD days. The Operations Coordinator also told the grievor to call him back in an hour and he would check into the leave of absence option. The grievor did not call back and he did not ask anyone for the leave of absence in the meantime. He also recalled telling the grievor during their conversation on April 27th to check with the crew office later because she would still have to book herself off if a leave of absence was granted. The grievor, for her part, said that she was left with the impression that the leave of absence was granted.

The grievor was then contacted by the Assistant Superintendent. He stated in a memorandum that he first tried to contact the grievor at 14:10 on April 30th at the two numbers that were listed for her when she failed to show up for work. There was no answer at either number. He then received a call from the grievor later on that day seeking a leave of absence. He told the grievor that she was not on a leave of absence and therefore an extension could not be granted, and one had not been processed for her up until that time. She was further advised that her current leave of absence request could not be granted because of crew shortages and that she was expected to protect her assignment. The grievor then explained that she was in Prince George fixing up a rental property and could not leave. She was told again that a leave of absence could not be processed. He received a further call from the grievor on May 10th to say that she could not come into work because she had to look after her children while her husband was still in Prince George. The grievor was told again at that time that she was considered AWOL and that she would be investigated formally. She was then advised on May 18th that she was being held out of service. The grievor stated at her investigation that she remained on AWOL status after May 2nd because she was required to look after her children while her husband was away. In her words " … the circumstances were beyond my control".

As noted in **CROA 3077**, child care responsibilities are important but there is also an obligation on employees, particularly in this industry, to report to work when scheduled to do so. As the Arbitrator stated:

> While child care is obviously an important responsibility for any individual, persons holding employment must appreciate that their obligations in obtaining the services of babysitters must be discharged in such a way as to allow them to fulfil their obligations to their employer by faithful and assiduous attendance at work.
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> …
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> Again, it would appear that three occasions of absence were caused by the grievor's failure to provide for appropriate child care for his children. In the Arbitrator's view, as important as such concerns must be, they are not a valid excuse for non-attendance at work. Rather, absent extraordinary circumstances, they must be viewed as a failure on the part of the grievor to plan responsibly to allow himself to be available to fulfil his employment obligations.

As further noted in **CROA&DR 3549:**

> This grievance brings to the fore what must be recognized as a constant in any employment relationship, namely the tension between personal and family obligations and obligations to one's employer. Myriad circumstances might influence an employee's personal or family obligations: care for a child, care for an aged parent or another close relative or care for a spouse with a serious medical disability. Other personal circumstances might include parole or community service obligations after sentencing, close involvement with a church or social group, civic volunteering or competitive sports activities, to name but a few.
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> A railway is, by its nature, a twenty-four hour, seven day a week enterprise. Persons who hire on to work, particularly in the running trades, know or reasonably should know that their hours of work will be irregular and that they will, on occasion, be compelled to change location to protect work as needed. In exchange for meeting those onerous obligations railway employees have gained the benefit of relatively generous wage and benefit protections.
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> On what basis can a board of arbitration, charged with interpreting and applying the terms of the collective agreement, conclude that the conditions of single parenthood can effectively trump the obligations of employment negotiated by the parties within the terms of their collective agreement? In a world where single parenthood is not uncommon that is not an inconsiderable question._As a general matter, boards of arbitration, including this Office, have confirmed that with respect to issues such as childcare the onus remains upon the employee, and not the employer, to ensure that familial obligations do not interfere with the basic obligations of the employment contract.

The grievor was in my view properly disciplined for failing to call the crew office on March 21st. Similarly, the grievor is deserving of discipline in relation to the events surrounding her purported leave of absence beginning on April 29, 2007. When told to attend for her assignment on May 10th, the grievor simply declined to report to work as directed. To aggravate matters, she did not communicate with her Assistant Superintendent for some 10 days afterwards. That cavalier approach to her work is inconsistent with what is expected of an experienced employee, even under stressful personal circumstances. The core reason for her

absence was child care needs which are faced by the general population every day. As noted above, child care is an important concern but not a valid reason to miss work.

The parties had some differences of opinion as to the grievor's record but there is common ground that her recorded discipline at the time of her termination stood at no less than 35 demerits. With the additional 25 demerits assessed for the current transgression, the grievor was dismissed for having accumulated a total of 60 demerits under the Brown system.

In the end, this is not a case for adjustment of penalty, the grievor's 20 years of service notwithstanding. It is evident from a close reading of the facts that the grievor simply dismissed any immediate operational concerns that her absence may have caused the Company. In that regard, she demonstrated a complete disregard for her assignment once her leave of absence had been turned down by the Assistant Superintendent.

The grievor also does not have an exemplary work record. Amongst other disciplinary offences, she was the subject of a lengthy suspension in 2004 for improper timekeeping in relation to a tour of duty. Her attitude throughout this latest incident appears to be one of the Company having to accommodate her interests, be it for child care or otherwise. Her lack of dedication and interest in her work leads to the inevitable conclusion that she can no longer be relied on to work effectively or reliably for the Company on an ongoing basis. There are no other mitigating factors which suggest that a suspension would be an appropriate remedy under the circumstances.

For all the above reasons, the grievance is dismissed.

May 11, 2009

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR