

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

**CASE NO. 3772**

Heard in Edmonton, Tuesday, 9 June 2009

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Assessment of fifteen (15) demerits to Conductor Rick Comartin of Edmonton for failure to comply with Operating Bulletin 012 Revision to the Edmonton Operating Manual – Standards 5.2 (d) while starting work on G-88751-19 and subsequent dismissal from the Company for accumulation in excess of sixty (60) demerits.

**COMPANY'S STATEMENT OF ISSUE:**

On January 19, 2009, the grievor was called as a conductor for assignment G-88751-19, for 16:30 and was required to be on duty at 16:15. The grievor did not arrive at the booking in room until 16:33.

A formal investigation was held and the Company determined that the grievor was not in compliance with Operating Bulletin 012 Revision to the Edmonton Operating Manual – Standards 5.2 (d) when he reported for duty eighteen minutes after his on duty time.

Mr. Comartin was assessed fifteen (15) demerits for reporting late for duty and that resulted in his dismissal for accumulation in excess of sixty (60) demerits.

The Union contends that the grievor was delayed in arriving for work, however he had a completely legitimate explanation. The Union demands that the grievor be put back into service at once and be made whole.

The Company disagrees with the Union's contentions.

**FOR THE COMPANY:**

**(SGD.) P. PAYNE**

**FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Company:

- P. Payne – Manager, Labour Relations, Edmonton
- D. VanCauwenbergh – Director, Labour Relations, Edmonton
- D. Crossan – Manager, Labour Relations, Prince George
- K. Morris – Manager, Labour Relations, Edmonton

And on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
R. Comartin	– Grievor

### **AWARD OF THE ARBITRATOR**

The grievor lives about a forty-five minute drive from his home to the station in Edmonton. The grievor hit heavy traffic as a result of road repairs on the Yellowhead route. The facts in that regard are that there was a major water main problem at the intersection of 142nd St. and the Yellowhead Trail from January 16th to 20th and the traffic was reduced eastbound to two lanes and sometimes even to one lane.

The grievor claimed that he was not aware of the congestion despite several media reports about the traffic slowdown in the media, including several newspaper articles which were entered into evidence. The grievor also maintains that he called the crew office three times on the way to work to advise he would be late due to the traffic problem but could not get through to the office. The grievor indicated that he was stuck in the traffic jam for about 25 to 30 minutes.

The Union submits that the grievor is not guilty of any culpable conduct because he was caught in an unforeseen emergency and provided a reasonable explanation for his tardiness. Alternatively, the Union submits that the penalty imposed was unreasonable. The Company maintains that the grievor should have known about the potential route delays and did not allow for enough travel time. In addition, the

Company points to the grievor's unenviable work record which stood at fifty-five demerits at the time of the incident.

I agree with the Company that the grievor, like any other employee, has an ongoing responsibility to report to work on time. The grievor maintains that he was unaware of the road conditions and tried three times to call the crew office to say he would be late. Given the surrounding media reports and bearing in mind that this was a well-travelled highway, I am sceptical that the grievor did not have some prior knowledge of the road conditions as he claims. I also find his comment that he tried to contact the crew office but "could not get through" to be a self-serving excuse for his behaviour. After a thorough review of the facts, I find there was cause for discipline.

The grievor's work record indicates 7 occasions where he has been disciplined for attendance management issues, with 5 of those taking place since 2005. The fifteen demerits imposed for this culminating incident is therefore not out of line given his disciplinary record for similar transgressions. Indeed, it would have taken only five demerits to place the grievor over the sixty demerits required to terminate his employment under the Brown system. Nevertheless, recognition must be given to the fact that the grievor has 31 years of service. His delay of only three minutes past the scheduled time of departure did not disrupt the operations that day and the delay must therefore be considered in this case as being only minor in nature.

I am not convinced that the employment relationship is beyond repair and therefore order that the grievor be reinstated to his position without compensation or loss of seniority. The grievor should recognize that any further transgressions of a similar nature, including missed calls or lateness, will not be met with the same relief. He is effectively being given one final opportunity to demonstrate he can consistently be relied upon to show up for work on time when called upon to do so.

June 23, 2009

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