

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

CASE NO. 3787

Heard in Montreal, Wednesday, July 15, 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL CANADA TRAFFIC CONTROLLERS**

DISPUTE:

The assessment of 15 demerits to M. McCracken for alleged "failure to follow the direction of a Company officer

JOINT STATEMENT OF ISSUE:

On October 1, 2008, after having spoken to two managers in the RTC Centre, M. McCracken made changes to two assignments (desks) detailed in the Change of Card Master Sheet, without having received authorization to do so.

The Union contends that what transpired was a misunderstanding between management and an employee and this incident should have been handled without a formal statement or discipline and therefore maintains that the discipline was unwarranted and should be removed.

The Company denies the Union's contentions and declines the Union's claims.

FOR THE UNION:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. M. BLACKMORE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. S. Fisher – Director, Labour Relations, Montreal
P. Lavoie – Manager, RTC Operations, Toronto
S-P Paquette – Counsel

And on behalf of the Union:

J. Ruddick – General Chairman, Burlington

AWARD OF THE ARBITRATOR

There is no dispute that the grievor did improperly enter changes on a posted change of card schedule. He did so in a way which apparently improved his own work schedule and after certain discussions with two different supervisors. Unfortunately, the evidence is clear that the supervisor responsible for the posted schedules, Manager, RTC Operations at Toronto, Ms. Patti Lavoie and the Assistant Manager in the RTC Office, Mr. Rick Deforges did not authorize it

While the grievor asserts that he was given the impression that after his final discussion with Mr. Deforges the change that he suggested had been approved, it is clear that that was not the case. There is no direct evidence whatsoever to confirm, either to Mr. McCracken or to this Office, that Mr. Deforges either gave his approval or communicated the approval of Ms. Lavoie. At most, the response the grievor had from Ms. Lavoie, after several exchanges, was a refusal and from Mr. Deforges nothing more than the indication that he would speak to Ms. Lavoie about the request.

What the record reveals, without controversy, is that in fact Mr. McCracken did write changes onto a posted schedule, indicating on the face of the posting that they were approved by management, without any authorization to do so. Indeed, the notice itself, a copy of which was shown to the Arbitrator at the hearing, has bold capital letters on its cover stating "No Changes Are To Be Made To the Master Sheets".

The sole issue, therefore, is the appropriate measure of discipline. In that regard the Arbitrator considers that there may be mitigating factors to be considered. The record discloses that the grievor was previously employed as a manager in RTC Operations and that he has been in service for some eleven years. His discipline record is not unduly negative, recording some three prior instances of discipline, including two reprimands and one assessment of demerits during all of his prior service. While, in the normal course, this Office does not closely review the numbers of demerits assessed provided that the ultimate discipline is within the appropriate range, in the case at hand the Arbitrator deems it appropriate to reduce the demerits assessed against the grievor, in all of the circumstances, to a lesser value.

For all of the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's discipline record be amended to reflect ten demerits for the unauthorized alteration of the office document in relation to the October 2008 change of card.

July 20, 2009

(signed) MICHEL G. PICHER
ARBITRATOR