

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

**CASE NO. 3799**

Heard in Montreal, Wednesday 9 September 2009

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**UNITED STEEL WORKERS (LOCAL 1976)**

**DISPUTE:**

Appeal of the assessment of 20 demerit marks and subsequent dismissal of Employee A.

**JOINT STATEMENT OF ISSUE:**

On November 12 and December 29, 2008 Employee A attended an investigation and supplemental investigation in connection with her attendance record for the period of September 22 to November 11, 2008. Following these investigations, the Company assessed Employee A record with 20 demerit marks for continued excessive absenteeism and late arrivals between September 22 and November 11, 2008. Subsequently, Employee A was dismissed for accumulation of demerit marks.

It is the Union's position that the assessment of discipline was excessive and not deserving of the termination of Employee A's employment. It is further the Union's position that Employee A had personal health issues and provided proper legitimate excuses for her time off as evidenced by her explanations during her investigations.

The Union requests a reduction of the 20 demerit marks and that Employee A be reinstated without loss of seniority or benefits and that she be made whole for all lost wages.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**(SGD.) R. PAGÉ**  
**STAFF REPRESENTATIVE**

**FOR THE COMPANY:**

**(SGD.) J. DORAIS**  
**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. J. Corrigan	– Labour Relations Officer, Calgary
V. Anderson	– Assistant Labour Relations Officer, Calgary
J. Dorais	– Manager, Labour Relations, Calgary
M. Clayton	– Manager, Appointments & Dispatch,
M. Thompson	– Labour Relations Officer, Calgary

And on behalf of the Union:

S. Hadden	– Chairman of the Board of Trustees, Montreal
M. Raïche	– Projects and Group Insurance Executive, Montreal
Employee A	– Grievor

### **AWARD OF THE ARBITRATOR**

There can be no doubt but that the grievor has for an extensive period of time maintained an entirely unacceptable rate of absenteeism. During the entire course of her employment with the Company, when the average rate of absenteeism among her peers was 3%, Employee A registered an average of 12% as her personal absenteeism rate, in other words some four times the average of her fellow employees. In her short two years of service she had received discipline in the form of demerits for excessive absenteeism and late arrivals on some five previous occasions, in addition to five verbal warnings.

Notwithstanding many previous investigations and impositions of discipline for absenteeism, on September 3, 2008 the Company conducted yet another investigation of Employee A' absenteeism, dealing with the period between June 19 and August 15, 2008. During that period of time the Company registered the grievor as being late on five occasions and absent for illness on two other occasions resulting in twenty-four hours of missed work. She did in that investigation, apparently for the first time, disclose to the Company that she was a victim of domestic violence. The Company then exercised some compassion and issued no formal discipline to her.

However, the grievor's attendance did not improve. She was investigated on November 12, 2008 in respect of absenteeism prior to that time, during which she accumulated an additional forty hours of missed work. It appears that she was late for work on two occasions, booked sick on four days and left work four hours early on one occasion. Following certain supplemental investigations she was ultimately assessed with twenty demerits on January 15, 2009 as a result of which she was dismissed from Company service for the accumulation of demerits.

The Arbitrator cannot question the Company's legitimate concern with the clearly unacceptable rate of absenteeism registered by Employee A. In her short two years of employment she was either late for work, absent for illness or left work early on 103 occasions for a total of 565 working hours lost. I agree with the Company that that rate of absenteeism is not a state that the Company can or should be expected to tolerate. Given her relatively junior status, if those were the only facts before this Office, the grievance would have some difficulty in succeeding.

However, there are mitigating factor which must be weighed. The Company does not challenge that the grievor was, apparently for a substantial period of time during the course of her employment, the subject of physical abuse at the hands of her partner. It appears that that history in fact led to a criminal prosecution. It would also seem that that difficulty is now fully behind her, and that to the extent that it may have contributed to her absenteeism and punctuality problems, it will no longer be a factor in the future.

What, then is the appropriate outcome? I am satisfied that while the Company has substantial ground for concern, a remedy can be fashioned which protects it legitimate interests in the future, while giving the grievor a last chance to prove that she can be an employee who attends work faithfully.

The grievance is therefore allowed, in part. The Arbitrator directs that the twenty demerits assessed against the grievor be removed from her record forthwith, and that she be reinstated without compensation for any wages and benefits lost. The time between her termination and reinstatement shall be recorded as a suspension both for the failure of her candour in a Company investigation (**CROA&DR 3798**) and for her unacceptable rate of absenteeism, lateness and early departures from work. The grievor's reinstatement into her employment shall be subject to her accepting to be subject to the condition that she must maintain, for a period of not less than two years, a rate of attendance which is not less than the average for her peers in the workplace. Should she fail to maintain a rate of attendance equal to her peers in any quarter, calculated on a rolling basis during the two year period, she shall be subject to dismissal without recourse to arbitration save for the purposes of determining the accuracy of her attendance record and the average record for other employees.

14 September 2009

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