

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

CASE NO. 3814

Heard in Calgary, Tuesday, 10 November 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The assessment of twenty (20) demerits to Cam Flett of Winnipeg, MB, for “failure to book on prior to the expiration of the leaved of absence time allotted, resulting in AWOL status on July 10, 2008.”

UNION’S STATEMENT OF ISSUE:

The grievor, Cam Flett, was granted a leave of absence for the period of July 3, through July 9, 2008. Conductor Flett booked back on from the LOA at 07:30 on July 10. The grievor was called to work at 04:30 on July 11 on his regular turn. On July 12, the grievor was issued a notice to appear for an employee statement with respect to this matter. The investigation took place on July 23, following which the grievor was assessed twenty demerits.

The Union submits that that assessment of twenty demerits in this situation is improper and unreasonable and requests that discipline be expunged and the grievor be made whole.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
K. Morris	– Manager, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George
H. Harapick	– Trainmaster, Winnipeg

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
R. Thompson	– Vice-General Chairman, Edmonton
M. Rutzki	– General Secretary/Treasurer, Edmonton
W. MacLeod	– Local Chairman, Kamloops
J. Dwyer	– Local Chairman, Saskatoon
D. Bolianz	– Local Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The record before the Arbitrator reveals that the grievor, who was forty-two years of age at the time of the incident relating to this grievance, has some twenty-five years' service.

It is common ground that he was granted a leave of absence the terms of which required him to book back on as being available for work effective 23:59 on July 9, 2008. According to the grievor's account he returned from a vacation trip with his son, in accordance with an annual custody visitation arrangement, and checked the CATS system to discover that his regular assigned pool was out of town and that in all likelihood he would not be required to work until sometime on the following day. He then returned to unpacking the family car following which he began to watch a movie with his son. He explains that he fell asleep and awoke only at 07:30 the following morning when he promptly did book back on for service. It is not disputed that for the seven and one-half hour period between midnight and 07:30 in the morning the CATS system noted him as being absent without leave. On the basis of that infraction the Company assessed twenty demerits against his record.

The Arbitrator has considerable difficulty with the extent of the discipline assessed in the case at hand. This is not a case of an individual who is "AWOL" in the sense that he or she has gone missing for a substantial period of time or has failed to respond either to telephone calls or registered letters sent by his or her employer. While the grievor obviously did fail to book back on for service as he was required to do punctually as of midnight, his failure occasioned no significant hardship to the Company as in fact there was no work, barring an unforeseen emergency, to which he would in all likelihood be called. In fact there was no need for his services before the time he finally booked on at 07:30 the following morning and he did not return to active service for a considerable time.

The Arbitrator can appreciate the Company's concerns with respect to the grievor's prior disciplinary record which involves some discipline for having failed to protect assignments and maintain a satisfactory attendance or work record. It appears that as recently as May 19, 2008 he had been issued a written reprimand for booking sick to obtain leave, although it appears that that discipline and others are still under appeal pending arbitration.

In the Arbitrator's view the case can be dealt with on its stand-alone merits. The assessment of twenty demerits for what amounts to a relatively technical AWOL incident of extremely short duration is, in my view, clearly excessive. I am satisfied that in all of the circumstances a written reprimand would have been sufficient to deal with the grievor's failure to have booked back on for service in a more precise and timely fashion.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the twenty demerits assessed against Mr. Flett be removed from his record forthwith, with a written reprimand to be substituted and his record to continue to reflect a total of thirty-five demerits.

November 18, 2009

(signed) MICHEL G. PICHER
ARBITRATOR