

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

**CASE NO. 3827**

Heard in Calgary, Thursday, 12 November 2009

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)**

**EX PARTE**

**DISPUTE:**

The assessment of 20 demerit marks against Anthony Fudali for allegedly leaving work before the end of his shift without obtaining permission from his supervisor and failing to report this on his time sheet on July 2, 2009.

**UNION'S STATEMENT OF ISSUE:**

On August 5, 2009, Anthony Fudali was issued a CN for 780 advising that he was assessed 20 demerit marks for allegedly leaving work before the end of his shift without obtaining permission from his supervisor and failing to report this on his time sheet on July 2, 2009.

The Union contends that Mr. Fudali's leave work was an isolated case which no nefarious intent but rather to meet an arrange appointment. It is the Union's position that the Company failed to take into consideration mitigating factors such as the employee's long service and excellent work history. The Union further contends that the investigation was flawed and not in keeping with collective agreement and that the assessment of discipline was untimely.

The Union is seeking the removal of the discipline and for all loss including but not limited to wages, benefits and CCS for pensionable service.

The Company failed to respond to the Union position within the time limits outlined in the Supplemental 5.1 collective agreement.

**FOR THE UNION:**

**(SGD.) R. FITZGERALD**

NATIONAL REPRESENTATIVE

There appeared on behalf of the Company:

- R. Campbell – Manager, Labour Relations, Winnipeg
- B. Laidlaw – Manager, Labour Relations, Winnipeg
- C. Calquhoun – Senior Coordinator

And on behalf of the Union:

- R. Fitzgerald – National Representative, Toronto
- B. Kennedy – President, Council 4000, Edmonton
- D. Michaluk – Regional Representative, Praire Region
- R. Shore – Regional Representative, Mountain Region
- A. Fudali – Grievor

**AWARD OF THE ARBITRATOR**

The grievor is a sixty-three year old employee with thirty-four years of service. In all of those years he has not had problem with attendance and has never previously been disciplined.

It does not appear disputed that the grievor did leave work early on July 2, 2009, without obtaining permission from his supervisor and without making any adjustment in his time sheet. While there is no certainty, it would appear that he may have left as much as fifteen minutes early.

In the Arbitrator's view the incident is deserving of discipline, but would, I think, have properly been dealt with by the assessment of a written reprimand, in light of the grievor's prior record and length of service.

The grievance is therefore allowed, in part. The Arbitrator directs that a written reprimand be substituted for the twenty demerits assessed against the grievor's record.

November 24, 2009

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