

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3850**

Heard in Montreal, Wednesday, 13 January 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The assessment of 20 demerits to Kim Essar of Biggar, SK, for unnecessary delays on trains L50151-22 and L50151-23 and twenty-five demerits for failure to protect L501-23 at the expiration of personal rest during her tours of duty on September 22 through 24.

UNION'S STATEMENT OF ISSUE:

On September 22, 2008, Kim Essar was working as assistant conductor on the 501 assignment out of Biggar. This tour of duty experienced delays ... Following this tour of duty she booked rest. ... The Company ... attempted to call the grievor for train 501 On September 23, 2008 . She advised the CMC that she was on rest. ...

Following an investigation she was assessed 20 demerits for delay and failure to protect train 501 and twenty-five demerits for conduct unbecoming an employee.

The Union submits that there was no delay attributable to the grievor which ought to attract discipline and that there was no behaviour that could be characterized as conduct unbecoming an employee. Further, the Union submits that the grievor has received two assessments of discipline for the same incident contrary to natural justice and the discipline ought not be allowed to stand. Finally the Union submits that the Company has singled out the grievor as a "focus employee" and has acted in a discriminatory and improper manner in these assessments of discipline.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George
G. Guest	– Assistant Superintendent, Melville

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
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B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
R. S. Thompson	– Vice-General Chairman, Edmonton
R. S. Donegan	– Local Chairman, Biggar
K. Essar	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the grievor was partially responsible for the delay in the operation of her train on September 22, 2008. In the Arbitrator's view, among other things, the grievor and her crew were irresponsible in not immediately reporting to supervisors that their locomotive was in need of a reverser handle to be able to operate. It appears that they simply waited for another train to arrive in Biggar to obtain a reverser handle from a trailing unit on that train, only after the passage of a considerable amount of time. I am also satisfied that the following day, September 23, 2008, the grievor gave an insufficient explanation for not having departed Wainwright some three hours after the commencement of her crew's tour of duty on the alleged basis that they were delayed by reason of correcting paper work. Given the grievor's extensive prior record of discipline, I am satisfied that the assessment of twenty demerits was appropriate for the delays to the grievor's assignments on September 22 and 23, 2008.

The Arbitrator turns to consider the separate allegation that the grievor failed to protect her assignment and engaged in conduct unbecoming. The record confirms that instructions were conveyed to Conductor Marchuk that he and his crew should secure their train at Landis and proceed to the bunkhouse at their home terminal of Biggar to be tied up, to be able to resume duty after eight hours of rest. In fact, Mr. Marchuk does

not appear to have communicated that directive to either Ms. Essar or Locomotive Engineer Scheirich. Consequently, upon returning to Biggar the grievor booked fourteen hours personal rest and returned to her home, as did her two crew mates. When Ms. Essar was awakened at her home at 02:35 hours on September 24th by a crew caller who told her that she was expected to resume operation of her train at Landis, she indicated that she had booked rest. When Crew Supervisor Todd Chappell came onto the call to advise Ms. Essar that she had booked rest improperly, and that Trainmaster Len Roy would be patched into their telephone conversation to address the matter further, Ms. Essar responded that she was on rest, that she was going back to bed and that the matter could be dealt with in the morning. She then ended the conversation by hanging up.

In the Arbitrator's view the Company cannot rely on the fact that the grievor failed to protect work as a basis for the assessment of a further twenty-five demerits against the grievor. The preponderance of the evidence before the Arbitrator is that she had no knowledge of the instructions which had been conveyed to her conductor. Given her state of mind, the steps which she took to book rest were entirely consistent with the terms of her rights and obligations under the collective agreement.

There is, however, a fair basis of concern for the grievor's refusal to speak to the trainmaster when asked to do so by Mr. Chappell. Whether she could or could not have properly refused to return to work when called after she had booked rest is a debateable question, but it was plainly not appropriate for an employee in the position of the grievor

to simply cut off any discussion by refusing to speak with the trainmaster, and effectively hanging up the phone on her employer. While I am satisfied that the grievor's intention was not to be disrespectful or insubordinate, I must conclude that she did fail in her obligation of respect to the Company by effectively refusing to even engage in a conversation about the situation which had developed. In the Arbitrator's view the grievor's actions during the course of the telephone conversation with Mr. Chappell were deserving of discipline, albeit less than the amount assessed against her. In the Arbitrator's view ten demerits would have been appropriate in the circumstances. The Union's allegation of unfair procedures in the investigation and double jeopardy are rejected.

The grievance is therefore allowed, in part. The Arbitrator confirms that the twenty demerits assessed against the grievor for the delay of her trains on September 22 and 23, 2008 must stand. The twenty-five demerits assessed against her for the failure to protect her assignment and conduct unbecoming shall be amended to the assessment of ten demerits for conduct unbecoming. In the result the grievor's disciplinary record shall stand at thirty-five demerits following the events reviewed above.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR