

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3855**

Heard in Montreal Tuesday, 9 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of thirty (30) demerits to the record of Foreman K. Wilks and his subsequent discharge for accumulation of sixty (60) demerits.

UNION'S STATEMENT OF ISSUE:

On December 17, 2007, Foreman Wilks was required to attend a formal statement in connection with circumstances surrounding his work history since October 2007. subsequent to the investigation Mr. Wilks was assessed thirty demerits and subsequently dismissed, effective January 11, 2008, for accumulation of seventy (70) demerits.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to the matter, was unwarranted but in any event too severe. The Union is requesting the reinstatement of Mr. Wilks without loss of seniority and benefits and that he be compensated for all lost earnings as a result of the discharge. In the alternative, that the discipline assessed be reduced accordingly in consideration of all of the mitigating factors.

The Company disagrees with the Union's position.

FOR THE UNION:
(SGD.) J. R. ROBBINS
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) A. DAIGLE
FOR: SENIOR VICE-PRESIDENT

There appeared on behalf of the Company:

A. Daigle	– Manager, Labour Relations, Montreal
D. Gagné	– Sr. Manager, Labour Relations, Montreal
R. MacDougall	– Sr. Director, Labour Relations, Montreal
S. Arbour	– Manager, Operating Practices, Montreal

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
J. R. Robbins	– General Chairman, Sarnia
F. Boutilier	– Vice-Local Chairman, Halifax
K. Wilks	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that over a long number of years the grievor has recorded an unsatisfactory attendance record. In the ten year period prior to his termination he received various forms of discipline, ranging from a written reprimand to a thirty day suspension, on ten separate occasions, including the assessment of twenty demerits in February of 2007, and a further twenty demerits in April of the same year.

The facts giving rise to the grievor's termination and this grievance concern his attendance record between October 9 and December 11, 2007. It is noteworthy that in the year 2007 Mr. Wilks recorded thirty days of undocumented absences, a pattern consistent with his record in the previous six years. Additionally, as part of his attendance failures, the Company notes that the grievor effectively went AWOL when he was displaced from his position on October 9, 2007. Mr. Wilks did not then elect a subsequent assignment for a period of some nineteen hours following his notification that he had been displaced, a period which the Company maintains is excessive and unwarranted.

The Arbitrator does not consider it necessary to deal with the AWOL issue. In my view the frequency of undocumented absences registered by the grievor during the period here under review sufficiently raises questions as to the legitimacy of his absences, thereby giving reason for the assessment of some discipline. While the Union stresses that the Company did not in all instances ask the grievor for medical

certification of his absences at the time, there is no obligation upon it to do so. Conversely, when an extensive pattern of absenteeism is demonstrated, there can be a commensurate obligation on the employee to bring a clear and compelling explanation. The Arbitrator is not satisfied that the explanations provided by the grievor are adequate to respond to what the Company properly viewed as a plainly unacceptable rate of attendance at work.

There are, however, mitigating factors to consider with respect to the appropriate outcome in the case at hand. The grievor was originally hired in 1979, and must be viewed as a long term employee. His rather extensive disciplinary record is almost entirely comprised of attendance issues. There is no record of operating rules violations by the grievor in the last ten years of his employment. In the Arbitrator's view the instant case is best resolved by reinstating the grievor into his employment, albeit on conditions fashioned to protect the employer's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Wilks be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. His disciplinary record shall stand at forty demerits and the period between his termination and reinstatement shall be recorded as a suspension. However, the grievor's reinstatement shall be conditioned upon his accepting to be subject to the following condition: for the period of two years following his reinstatement Mr. Wilks shall maintain a record of attendance better than or equal to the average of his peers at his terminal. A failure to maintain such a

standard during any continuous three month period within the two years shall be grounds for his termination, with access to the grievance and arbitration process only for purpose of determining the relevant rates of absenteeism.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR