

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

CASE NO. 3856

Heard in Montreal, Tuesday, 9 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 15 demerits to Conductor R. Savary for her "violation of Attendance Management Standards from June 01, 2006 up to and including July 18, 2006."

JOINT STATEMENT OF ISSUE:

On July 24, 2006, Conductor Savary was required to attend a Company investigation in connection with the circumstances surrounding "the alleged violation of the corporation's Attendance Management Standards from June 01, 2006, up to and including July 18, 2006." Conductor Savary, subsequent to the investigation, was assessed 15 demerits.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter is unfounded and unwarranted and should be removed in its entirety.

The Company disagrees and deems that the discipline assessed was both warranted and appropriate in this instance.

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

FOR THE COMPANY:
(SGD.) F. O'NEILL
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

F. O'Neill	– Manager, Labour Relations, Toronto
D. Gagné	– Sr. Manager, Labour Relations, Montreal
R. McDougal	– Sr. Director, Labour Relations, Montreal
J. Kelly	– Sr. Manager, Business Management, Montreal

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
J. R. Robbins	– General Chairman, Sarnia
R. Savary	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator reveals, among other things, what can only be described as a pattern of the grievor booking rest so as to effectively extend her scheduled days off. In the face of that conduct, the Arbitrator notes the observations of Arbitrator Weatherill in a grievance between the Company and the predecessor union in a decision dated April 8, 2004 respecting the pattern booking of rest by another employee in GO service (**AH 551**). At p. 8 of that award the following paragraph appears:

It is my conclusion, as a matter of interpretation of article 51, that while the booking of rest on any particular occasion is a matter for the judgment of the individual employee, and may not be "second-guessed" by the employer, where an employee has, in fact, abused the right to book rest by, in effect, granting himself or herself time off under the false guise of booking rest, it is open to the employer to prove this, if it can, and, in a proper case, to discipline the employee therefor.

Additionally, I am satisfied that there were occasions where the grievor did not adequately substantiate the reasons for her absences. Notably, on one occasion she was denied her request for a personal leave day, and thereafter booked sick for some seven days from June 19 to June 25, 2006. Although she did produce a doctor's note in respect of the period of June 19-22, as it is dated June 21, and makes no reference to June 23, 24 and 25, it is of rather doubtful weight, at best.

For the foregoing reasons the Arbitrator is satisfied that the grievor did knowingly disregard her work obligations towards the Company both by booking rest and claiming illness in the period under review. For these reasons the grievance is dismissed.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR