

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

CASE NO. 3857

Heard in Montreal, Tuesday, 9 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 25 demerits to Conductor R. Savary for her "Failure to comply with Company AMS Standards from 19 July to 31 August 2006".

JOINT STATEMENT OF ISSUE:

On November 19, 2006, Conductor Savary was required to attend a Company investigation in connection with the circumstances surrounding "alleged failure to comply with Company AMS Standards 19 July to 31 August, 2006". Conductor Savary, subsequent to the investigation, was assessed 25 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 evidence reveals that over the six week period under investigation the grievor worked only twenty of a possible thirty days, recoding a 33.3% rate of absenteeism. She engaged in what appears to have been a pattern of booking rest causing her to miss her split shift assignments, frequently on Fridays and Mondays, although other days were also involved.

As noted in **CROA&DR 3856**, as a general rule the right to book rest is unqualified. Where, however, the pattern of booking rest appears to reveal something more than the need for rest, namely to fashion a work schedule deemed more suitable by the employee, an unacceptable abuse of booking rest is disclosed. That, I am satisfied, is demonstrated in the case at hand. Nor am I persuaded that there was, as the Union alleges, undue delay in conducting the investigation. It would appear that the investigation was delayed, in substantial part, by the lengthy absence of the grievor from September 7 to November 15, 2006.

On the whole, I am satisfied that the Company has demonstrated that the grievor did book rest in a manner which was effectively abusive and inconsistent with her obligation of faithful attendance at work in accordance with her work schedule. The grievance is therefore dismissed.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR