

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

CASE NO. 3858

Heard in Montreal, Tuesday, 9 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 10 demerits to Conductor R. Savary, for "You (sic) abandonment of your assignment on 17 November, 2006".

JOINT STATEMENT OF ISSUE:

On November 22, 2006, Conductor Savary was required to attend a Company investigation in connection with the circumstances surrounding "alleged abandonment of assignment on 17 November, 2006". Conductor Savary, subsequent to the investigation, was assessed 10 demerits.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter, was not timely, 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 record reveals that the grievor has an extensive record of attendance problems, with a pattern of booking sick and booking rest which substantially reduced her attendance figures in 2006. It appears that on September 7, 2006, when Ms. Savary was served with a notice to appear for an investigation concerning her attendance, she immediately booked sick, saying that she was under excessive stress, and she failed to appear at the investigation scheduled for two days later. The Company subsequently sought to conduct an investigation into her non-appearance at the investigation, and served a notice to appear at a further investigation for that purpose on November 17, 2006, shortly after she came on duty on that day. She immediately responded by booking off as unfit and left her work assignment shortly thereafter. The Company subsequently assessed ten demerits against the grievor for abandonment of her assignment on November 17, 2006.

The Arbitrator notes the submission of the Union that the grievor felt that she was being harassed and intimidated by a supervisor, and that the notice of a further investigation induced a condition of stress. With respect, while the Arbitrator can appreciate that the employee was not pleased with the notice of investigation that was given to her, there is a degree of application of the principle of “work now – grieve later” which comes into play. Unfortunately, the grievor appears to have developed something of a pattern of booking rest and booking sick as a form of protest to the Company. It is less than clear to the Arbitrator that in fact the grievor could not have worked as scheduled.

I am compelled to conclude that she did abandon her work assignment, and did so without justification. The grievance is therefore denied.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR