

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

**CASE NO. 3859**

Heard in Montreal, Tuesday, 9 February 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Assessment of 40 Demerits to Conductor R. Savary, Pin 104221, for "Your failure to comply with Company Attendance Management Standards from 6 September to 9 November, 2007", which resulted in discharge effective 09 November, 2007, due to the accumulation of demerits in excess of 60, as per Company policy.

**JOINT STATEMENT OF ISSUE:**

On November 20, 2007 Conductor Savary was required to attend a Company investigation in connection with the circumstances surrounding "alleged failure to comply with Company Attendance management Standards from 6 September to 9 November 2007". Conductor Savary, subsequent to the investigation, was assessed 40 demerits. This assessment, when coupled with her previous discipline resulted in her "Discharge – Due to Accumulation".

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter, was unwarranted but in any event, too severe. The Union is requesting the removal of the discipline from Ms. Savary's record. In the alternative, the Union requests that such discipline be commensurate to this incident.

The Company disagrees and deems that the discipline assessed was both warranted and appropriate for her continued dismal attendance record.

**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 discloses that from July of 2000 to November of 2007, the grievor recorded an absenteeism rate of 67%. Her pattern of absenteeism caused the employer concern in periods of time before the events giving rise to this grievance (see **CROA&DR 3856** and **3857**). In November of 2007 the Company undertook to review the grievor's attendance in the period September 6 to November 9, 2007. During that time she was absent on thirty-five scheduled work days out of the sixty-one work day period being investigated. Nine of the days of absence resulted from her booking rest in a manner that took her beyond her next day's work assignment. She was also off work sick for a period of some seventeen work days. It appears that Ms. Savary also developed a pattern of not immediately exercising her seniority into another position, by responding to notices of the CMC that she had been bumped by seniority only on the following morning, so as to make too late for her to protect any GO assignments.

The Arbitrator notes that the Union challenges the Company's position as to the right of employees to take up to 72 hours to exercise their seniority when they have been displaced from an assignment in road service, as provided under article 47.18 of the collective agreement. The Company submits that that article is intended to deal with the realities of freight road service, and it is abusive to assert it in the more regular operations of GO service. The Arbitrator considers it unnecessary to deal with that issue for the purposes of this grievance, given the determinations made on other aspects. Nor

do I consider it necessary to deal with absences for which the grievor claimed illness or the Union's assertion that the Company cannot assess discipline in respect of such absences, particularly where no medical documentation was requested at the time.

On the whole, I am satisfied that the numbers of absences recorded by the grievor, including her pattern of booking rest and a number of absences for illness which were not documented did give the Company grounds to conclude, on a reasonable basis, that she was simply not fulfilling her attendance obligations as required. On that basis I am satisfied that she was liable to discipline and, given her prior record, it was not unreasonable for the Company to view the situation as a culminating incident. In dealing with this matter it should be noted that there is no indication that the grievor ever put to the Company that she had need for further accommodation in terms of her work attendance by reason of what appears to be a documented disability, a disability which was the basis for the grievor's assignment to GO service in the first place.

The Arbitrator is satisfied, however, that an order of reinstatement can be made, with a substitution of penalty, subject to conditions fashioned to protect the Company's legitimate interests. The grievance is therefore allowed, in part. The Arbitrator directs that the forty demerits assessed against the grievor be removed from her record, and that a suspension from the date of her termination to the date of her reinstatement be substituted. The grievor shall then be reinstated into her employment forthwith, with no compensation for wages and benefits lost, and with no loss of seniority. Her reinstatement shall, however, be conditioned upon her agreeing to work in accordance

with the following condition: during the period of two years following her reinstatement she shall maintain a rate of attendance at work better than or equal to the average of her peers at her terminal. A failure to meet that standard in any three month period during the two years shall be cause for her termination, with access to grievance and arbitration only for the purposes of determining the appropriate attendance figures.

February 26, 2010

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**