

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

**CASE NO. 3879**

Heard in Calgary, Wednesday, 10 March 2010

concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the issuance of 15 demerits to Locomotive Engineer Tom Hicken.

**JOINT STATEMENT OF ISSUE:**

On June 20, 2008, the grievor was assessed 15 demerits for "improper use of the sick clause to take time off on May 18, 2008."

The Union contends first that there is no "sick clause" in the Locomotive Engineers' collective agreement. We further contend that during the investigation into this matter the grievor has provided a full, honest and reasonable explanation of the reason for his being unfit. The Union submits that the sole reason for his being unfit on May 18, 2008 is the cycling accident suffered by the grievor on that same day. There is no evidence of any inconsistency or inaccuracy in Engineer Hicken's account of his booking unfit.

As such it is the Union's position that the Company has not established improper use of the unfit clause (Article 32) to obtain time off on May 18, 2008. The Union contends that the discipline assessed to Engineer Hicken is unjustified, unwarranted and excessive in all of the circumstances.

The Union requests that the discipline be removed. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees with the Union's contentions and denies the Union's request.

**FOR THE UNION:**

**(SGD.) D. ABLE**  
GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) A. A. GARCIA**  
FOR: ASSISTANT VICE-PRESIDENT – OPERATIONS

There appeared on behalf of the Company:

V. White	– Assistant Labour Relations Officer, Calgary
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
J. Bairaktaris	– Director, Labour Relations, Calgary
A. A. Garcia	– Manager, Labour Relations, Calgary
D. Burke	– Project Specialist, Calgary

And on behalf of the Union:

M. A. Church – Counsel, Toronto  
D. Able – General Chairman, Calgary  
G. Edwards – Sr. Vice-General Chairman, Revelstoke  
G. Seiller – Local Chairman, Lethbridge  
R. Purtill – Local Chairman, Moose Jaw  
T. Hicken – Grievor

### **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied that the record confirms that the grievor did exaggerate the condition of the an injury to his hand, thereby making himself improperly unavailable for service from Sunday May 18, 2008 through Tuesday May 20, 2008. It does not appear disputed that the grievor was well enough to undertake an extensive automobile trip on Tuesday the 20th. While I accept that he did injure his hand as he describes, I am also satisfied that he could have made himself available to work out of his pool on Tuesday May 20, 2008.

The record discloses that the grievor has an extensive negative record in respect of absenteeism, this being the seventh occasion on which discipline has been assessed against him in that regard. In the circumstances I am satisfied that the assessment of fifteen demerits should not be disturbed.

The grievances is therefore dismissed.

March 15, 2010

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