

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

CASE NO. 3902

Heard in Montreal, Wednesday, 12 May 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of 15 demerits in October 2008, and 15 demerits in January 2009 to the record of Halifax Conductor I. Monroe, ultimately resulting in his discharge for accumulation of seventy (70) demerits.

JOINT STATEMENT OF ISSUE:

On October 16, 2008, Conductor I. Monroe was required to attend a formal statement in connection with his booking sick on call on October 4, 2008. Following the investigation Mr. Monroe's record was assessed with 15 demerits.

On February 9, 2009, Conductor I. Monroe provided a formal statement to explain his failure to have an up-to-date Operating Manual while working as conductor on train 407 on January 24, 2009. Said violation resulted in 15 demerits being assessed to Mr. Monroe's discipline record.

Subsequent to the last investigation Mr. Monroe was dismissed, effective March 1, 2009, for accumulation of seventy (70) demerits.

It is the Union's position that the discipline assessed was excessive, unwarranted and inappropriate. The Union further disputes the Company's violation of article 84, 82 and the Workplace Environment provisions of the collective agreement. It is also the Union's position that remedy is appropriate as per the provisions of article 85 and Addendum 123 of the collective agreement.

The Union requests that the grievor be reinstated without loss of seniority and benefits and that he be compensated for all lost earnings as a result of the discharge. In the alternative, that the discipline assessed be reduced in consideration of all mitigating factors.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) J. M. ROBBINS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. DAIGLE
FOR: SENIOR VICE-PRESIDENT

There appeared on behalf of the Company:

- A. Daigle – Manager, Labour Relations, Montreal
- D. Gagné – Sr. Manager, Labour Relations, Montreal
- G. Yeadon – Supervisor, Halifax
- S. Arbour – Operating Practices, Montreal

And on behalf of the Union:

- J. Robbins – General Chairman, Sarnia
- F. Boutillier – Vice-Local Chairman, Halifax
- B. Boechler – General Chairman, Edmonton
- D. Joannette – General Chairman, Quebec City
- J. Holliday – General Chairman, Vancouver
- R. A. Hackl – Vice-General Chairman, Edmonton
- S. Cahoon – Local Chairman, Winnipeg
- K. Ilchyna – Vice-Local Chairman, Winnipeg
- I. Monroe – Grievor

AWARD OF THE ARBITRATOR

This arbitration concerns two heads of discipline assessed against Conductor Ian Monroe. The first involves fifteen demerits for having refused a call on October 4, 2008, on the basis that the grievor had a sore back and was unable to work. The second involves an additional fifteen demerits for the grievor having been found to be in possession, while on duty, of a rule book which was not up to date, during the course of an efficiency test conducted on January 24, 2009.

I deal firstly with the issue of the grievor's refusing a call. His explanation is that on the night prior to the call, which he received at approximately 8:00 a.m. Halifax time, he had been involved in moving his girlfriend from one apartment to another, as a result of which he awoke with serious back pain. While the precise times do not emerge from the investigation, it is unclear to the Arbitrator that the grievor could not have communicated with the Company before it made its call to him, in order to book off sick as would have been his obligation. Rather, he simply awaited the call which came, and

at that point declined the call. It does not appear disputed that having taken some muscle relaxants he did book back on later the same day.

In the Arbitrator's view the grievor did render himself liable to discipline. I accept, however, that his back condition was a mitigating factor to be taken into account. I am also not inclined to agree with the Company as regards the grievor's record with respect to timekeeping. While it is true that he had an extremely negative record in respect of absences from work and violation of attendance standards for what appears to have been approximately a thirteen year period ending in 2003, thereafter, consistent with a substantial change in his personal life, he did not incur any discipline for attendance issues. In the circumstances, I am satisfied that a written reprimand would have been sufficient to remind the grievor of the importance of booking off sick in advance of receiving a call.

I have greater difficulty with the Union's case with respect to the grievor's failure to be in possession of an up to date rules book while on duty. It would seem that the grievor was in fact in possession of two rule books, having found one which was apparently lost or misplaced by another employee. While he maintains that he had a fully up to date rule book in his bag at the time he was observed by Trainmaster Graham Yeadon, using the found rule book which, it is not disputed, was in fact not updated, the fact clearly remains that he was using a rule book which was not up to date, a violation of the obligation established in General Rule A(ii) of the CROR which provides as follows:

- A Every employee in any service connected with movements, handling of main track switches and protection of track work and track units shall:

...

- (ii) have a copy of this rule book, the general operating instructions, current time table and any supplements, and other documents specified by the company accessible while on duty.

What the record discloses is that, even accepting that the grievor may have had an up to date set of the rules in his personal bag, he chose to place a deficient rule book on his working table while on duty. If it were necessary to so rule, I would find that the deficient rule book was the one which he chose to make “accessible” to himself while on duty, and that in so doing he was in violation of the fundamental intent of General Rule A(ii). In my view for an employee to say that he was aware of the deficiencies of the book he was using, but was referring to it for only limited purposes is not a satisfactory answer, and is plainly out of keeping with the fundamental concerns for safety and efficiency implicit in General Rule A(ii). I am therefore satisfied that the grievor did make himself liable to discipline and that the fifteen demerits assessed him were not inappropriate.

In the result, the grievance is allowed in part. The grievor shall be reinstated into his employment forthwith, with the fifteen demerits assessed against him for having refused a call to be substituted by a written reprimand. His disciplinary record shall stand at fifty-five demerits, but his reinstatement shall be without compensation for wages and benefits lost, and without loss of seniority.

May 17, 2010

(SIGNED) MICHEL G. PICHER
ARBITRATOR