

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

CASE NO. 3981

Heard in Calgary, 8 March 2011

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of written reprimand to Conductor M. Currier of Edmonton for booking sick while on call February 20, 2009.

COMPANY'S STATEMENT OF ISSUE:

On February 20, 2009, the grievor was called for assignment Q11251-18. Upon receiving the call for this assignment, the grievor notified the Crew Office that he could not report for work as he was sick.

The grievor was required to provide an employee statement with respect to booking sick while on call and was subsequently assessed a written reprimand.

The Union contends the Company is in violation of the *Canada Labour Code*, section 239(1), for issuing discipline to an employee because of absence due to illness.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
M. Merson	– Assistant Superintendent Transportation, Edmonton
A. Egey-Samu	– Risk Management Officer, Edmonton
R. Baker	– Trainmaster, Edmonton
D. Gagné	– Sr. Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
A. W. Franko	– Vice-General Chairman, Edmonton
M. Currier	– Grievor

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms, without controversy, that the grievor made himself available for call, in the sense that he had not booked off, when he was called for assignment Q11251-18 on February 20, 2009. It is only upon receiving the call that he notified the Crew Office that he was sick and would not accept it. On that basis he was assessed a written reprimand for “booking sick while on call”.

The Arbitrator accepts that the phrase “on call” in the foregoing notation connotes actually refusing to work by booking sick at the moment the employee is called, which occurred in the case at hand. In the result, the discipline assessed against the grievor was not for having booked sick, but rather for having booked sick only when he received his call to work. The expectation of the Company is that an employee who is not fit to work should advise the employer without delay, and in particular should not await the moment of an actual call to work, as that may cause substantial disruption to the efficiency of operations.

The Arbitrator cannot accept the submission of the Union to the effect that the discipline assessed against the grievor was contrary to the provisions of section 239(1) of the **Canada Labour Code**. That provision prohibits any reprisal against an employee for an absence due to illness or injury. The discipline in the instant case was not issued by reason of the grievor’s absence, nor did the Company question the legitimacy of his illness. Rather, the discipline assessed is for the fact that the grievor did, contrary to long standing policy, await the moment of an actual call to work before advising the Company that he would not attend at work because of illness. That rule, which is of long standing, is plainly intended to ensure that employees exercise a degree of vigilance

and responsibility in giving their employer reasonable advance notice of their inability to attend at work by reason of illness. I am satisfied that that is not an unreasonable requirement in the railway industry which must operate on a 24 hour a day, 7 day a week basis, with many trains being required to operate at unscheduled and sometimes unpredictable times.

In the result I am satisfied that the Company did have just cause to assess discipline against the grievor, and that on a first infraction of this kind the registering of a written reprimand was appropriate. The grievance must therefore be dismissed.

March 14, 2011

(signed)MICHEL G. PICHER
ARBITRATOR