

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

CASE NO. 4034

Heard in Montreal, Wednesday, 14 September 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

**THE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS' UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The assessment of 20 demerits to Equipment Operator P. Korchinski for failure to meet CN productivity expectations on September 8, 2010, specifically extending his scheduled break times.

JOINT STATEMENT OF ISSUE:

On September 12, 2010 an investigation was conducted with Equipment Operator P. Korchinski for failure to meet CN productivity expectations on September 8, 2010, specifically extending scheduled break times. Following the investigation, Equipment Operator P. Korchinski was assessed 20 demerits for the infraction.

The Union contends that the discipline assessed for the infraction was excessive and requests that it be removed from the grievor's record.

The Company disagrees with the Union's contentions and has declined the Union's grievance.

**FOR THE UNION:
(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE**

**FOR THE COMPANY:
(SGD.) S. PRUDAMES
LABOUR RELATIONS OFFICER**

There appeared on behalf of the Company:

S. Prudames	– Labour Relations Officer, Toronto
Wm. Perry	– Sr. Terminal Coordinator, Brampton
G. Robson	– Sr. Terminal Coordinator, Brampton

There appeared on behalf of the Union:

R. Fitzgerald	– National Representative, Toronto
J. Almdal	– Regional Representative, Toronto
D. Andru	– Regional Representative, Toronto
P. Korchinski	– Grievor

AWARD OF THE ARBITRATOR

The material establishes, to the Arbitrator's satisfaction, that the grievor did in fact engage in conduct which violated productivity expectations on September 8, 2010. It does not appear disputed that he took an extended lunch break which lasted some fifty minutes beyond his scheduled time to return to work.

The grievor offers the explanation that there was then an insufficient number of vehicles to allow him to work. The record confirms, however, that he made no attempt to convey his situation to either a supervisor or a lead hand, notwithstanding that he was in close proximity to both of those persons on some two occasions while he was in the lunch room. It does appear that on one occasion prior to being discovered in the lunch room he had gone to the garage to see whether a tractor might be available or a possible pairing for him to work as a groundsman. It appears that there was none, and it was shortly after that that he was encountered by Sr. Terminal Coordinator William Perry.

The grievor's prior disciplinary record involves several instances of discipline for insufficient productivity. In the circumstances I could not conclude that the assessment of twenty demerits was inappropriate. However, given the mitigating factor of certain of the grievor's personal circumstances, touched upon in the award **CROA&DR 4035**, I am satisfied that a substitution of penalty is appropriate. I therefore direct that the twenty demerits assessed against the grievor be removed from his record and that the period between his termination and reinstatement be recorded as a suspension for his failure

to meet productivity standards, as well as for his violation of the cell rule dealt with in **CROA&DR 4035.**

September 22, 2011

(signed) MICHEL G. PICHER
ARBITRATOR