

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4147**

Heard in Montreal, Thursday, 11 October 2012

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

Dismissal of Mr. J. Ives.

**JOINT STATEMENT OF ISSUE:**

By way of Form 104 dated April 3, 2012, the grievor, Mr. J. Ives, was dismissed from Company service for allegedly "fraudulently claiming mileage expenses for which you were not entitled". A grievance was filed.

The Union contends that: **1.)** The grievor is a long service employee with no history of fraudulent behaviour; **2.)** The grievor did not receive a fair and impartial investigation in violation of sections 15.1 and 15.2 of the collective agreement; **3.)** The grievor honestly believed that he was entitled to the expenses in question; **4.)** The grievor's dismissal was unfair and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith, without loss of seniority and with compensation for all financial losses incurred.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:  
(SGD.) WM. BREHL  
PRESIDENT**

**FOR THE COMPANY:  
(SGD.) M. MORAN  
MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

W. Scheurman	– Labour Relations Officer, Calgary
M. Moran	– Manager, Labour Relations, Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa

G. Doherty

– Prairie Region Director, Brandon

**AWARD OF THE ARBITRATOR**

It is not disputed that the grievor did claim mileage expenses to which he was not entitled. In fact he was utilizing a Company vehicle for which he had a Company credit card for fuel purchases. It appears that over an extensive period of time Mr. Ives claimed mileage expenses for driving the Company vehicle to and from his home on weekends.

Upon a review of the evidence I am not persuaded that the grievor deliberately defrauded the Company as it alleges, although I am also not persuaded that his actions were worthy of the standard of diligence and candour which he owed to his employer. Firstly, it must be stressed that the grievor submitted mileage claims openly and repeatedly for the approval of his supervisors. For a substantial period of time those claims were obviously approved. Moreover, when the grievor's regular supervisor, Manager Barry Simpson went on sick leave, and the grievor submitted his forms to Supervisor Randy Billiert, while Mr. Billiert apparently questioned his claims, he plainly did not direct the grievor that he must not claim mileage allowance when the latter apparently explained to him that "... it was always done that way in the past and it was always fine."

In the circumstances, I am satisfied that there was a degree of laxity on the part of both the grievor and the Company in what transpired. If it can be said that the grievor

knew or reasonably should have known that he could not claim the mileage expenses for operating a Company vehicle to and from his home on weekends, it must also be said that the Company knew or reasonably should have known that he was doing so and did nothing to expressly correct his conduct.

The Arbitrator cannot sustain the submission of the Union that the Company failed to conduct a fair and impartial investigation in the circumstances. It appears that there was an initial exploratory conversation between the grievor and his supervisor by way of a general inquiry into the manner in which the grievor had been making his claims. That conversation resulted in a memorandum concerning the grievor's explanation and a decision to proceed to a full-blown disciplinary investigation. In the Arbitrator's view the Company's actions in that regard were not improper nor did they violate the grievor's right to a fair and impartial investigation. I am satisfied that it was not inappropriate for the supervising officer to have a conversation to determine whether there was cause for an investigation, and to fashion a memorandum in that regard. The fact that the same officer did conduct the investigation which ensued does not, in my opinion, on the facts of the instant case, disclose a violation of the obligation to conduct a fair and impartial investigation. This is not a circumstance in which the officer can be said to have in fact been a witness to any material facts, much less any contested facts as there is no dispute as to what occurred.

In my view, the parties are both responsible for what happened. In the result, I am satisfied that the grievance should be allowed, in part. I direct that the grievor be

reinstated into his employment forthwith, without loss of seniority and with compensation for one-half his wages and benefits lost, as a reflection of the shared responsibility of both parties.

October 15, 2012

**(signed) MICHEL G. PICHER**

ARBITRATOR