

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4184**

Heard in Montreal, February 14, 2013

Concerning

**CANADIAN PACIFIC RAILWAY**

And

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

**DISPUTE:**

Dismissal of Mr. Glen Neilsen.

**JOINT STATEMENT OF ISSUE:**

On January 12, 2012, the grievor, Mr. Glen Neilsen, was dismissed from Company service for an accumulation of demerit marks in accordance with the Brown System of Discipline. At the time of his dismissal, the grievor had 75 demerit marks on his record. A grievance was filed. The Union contends that, the grievor began working for the Company in June, 1989. Mitigating and other factors existed that should have served to reduce the discipline assessed. The grievor's dismissal was excessive and unwarranted in the circumstances. The Union requests that: the grievor be reinstated into Company service forthwith, without loss of seniority, and under such conditions (if any) as the Arbitrator deems appropriate in the circumstances. The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:**  
**(SGD.) W. Brehl**  
**President**

**FOR THE COMPANY:**  
**(SGD.) M. Moran**  
**Manager of Labour Relations**

There appeared on behalf of the Company:

|               |                                     |
|---------------|-------------------------------------|
| W. Scheuerman | – Labour Relations Officer, Calgary |
| M. Moran      | – Manager Labour Relations, Calgary |

There appeared on behalf of the Union:

|          |                     |
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| D. Brown | – Counsel, Ottawa   |
| W. Brehl | – President, Ottawa |

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms, beyond any doubt, that the grievor left work without proper authorization and without good excuse on November 5, 2011 when he was working on a night tour of duty on the two man "Bolt Crew" in Alyth Yard in Calgary. It is not disputed that with some four hours remaining in his tour of duty the grievor simply told his foreman "I'm leaving", departed the property and did not return. He later explained that he left to help a friend move a television set.

The grievor's attendance is not enviable, and includes some nine previous occasions where the grievor was disciplined generally by the assessment of ten demerits, for being absent without permission.

The question is whether this is an appropriate case for a reduction of penalty. In the Arbitrator's view it is, based solely on the fact that the grievor is a long term employee , with over twenty-one years of service at the time of his termination. In my view, while I appreciate the Company's concern, it is not inappropriate to fashion a remedy which includes conditions to protect the employer's legitimate interests while communicating to the grievor that he is being given a last chance.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages or benefits lost, and without loss of seniority. The time between the grievor's termination and reinstatement shall be recorded as a suspension for absenteeism without permission.

Additionally, as a condition of reinstatement the grievor must accept that for a period not less than two years following his reinstatement he shall maintain a record of attendance/absenteeism which is at least equal to the average of his peers at his location. Failure of that condition, in any quarter of the two year period, shall render the grievor liable to termination.

February 18, 2013

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MICHEL G. PICHER  
ARBITRATOR