

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4189

Heard in Calgary March 13, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of the discipline and discharge to Conductor William Carpenter.

JOINT STATEMENT OF ISSUE:

On November 8, 2011, the Grievor was assessed 40 demerits as described on form 104 "For your inappropriate use of the sick clause in order to obtain personal time off, resulting in excessive unauthorized absences from work for the period between April 3rd, 2011 and October 1st, 2011 (second occurrence); a violation of Company Attendance Management Policy." As a result of this assessment of discipline, Conductor Carpenter was dismissed for accumulation of demerits.

It is the Union's position that Conductor Carpenter's discipline and discharge is excessive and unwarranted in all of the circumstances. The Union further contends that the Company's disciplinary action breaches the Collective Agreement and the Company's Attendance Management Policy. The Union requests that Conductor Carpenter be reinstated into Company service without loss of seniority and benefits. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees with the Union's contentions and denies the Union's request.

FOR THE UNION:
(SGD.) D. Olson
General Chairperson

FOR THE COMPANY:
(SGD.) A. Becker
Labour Relations Officer

There appeared on behalf of the Company:

M. Chernenkoff	– Labour Relations Officer, Calgary
M. Thompson	– Manager Labour Relations, Calgary
A. Becker	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

D. Elickson	– Counsel, Toronto
D. Olson	– General Chairman CTY, Calgary
D. Fulton	– Vice General Chairman, Calgary

J. Hnatiuk
W. Carpenter

– Local Chairman, Coquitlam
– Grievor, Coquitlam

AWARD OF THE ARBITRATOR

Upon a review of the material filed, I am compelled to agree with the Company insofar as it expresses concern with respect to the grievor's overall attendance record. It would seem that in the period of time under examination Mr. Carpenter registered twice the rate of absenteeism recorded by the average of other employees in his workplace. It also does not appear denied that on two occasions he invoked illness for absences which in fact were occasioned by his need to stay home to look after two children who were in fact ill. While that circumstance may have justified his absence, and might indeed have secured the Company's approval for it, it was not open to him to make a false claim of his own illness, as he did.

There are, however, mitigating factors to be considered. The record before me confirms that in the years 2009 and 2010 the attendance record of Mr. Carpenter was in fact far worse, reflecting, for example, twenty days of absenteeism in 2010. In fact Mr. Carpenter's attendance in 2011, which led to his termination, reflected a substantial improvement over his past pattern. That said, for reasons touched upon above, it is far from clear to the Arbitrator that the grievor has demonstrated a sufficient appreciation of the need to be regular in his attendance at work. Given Mr. Carpenter's 14 years of service, I am satisfied that this an appropriate case for his reinstatement, albeit on conditions fashioned to protect the Company's legitimate interests.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensations for wages and benefits lost. Mr. Carpenter's reinstatement shall be conditioned on his accepting to be subject to the following conditions for a period of not less than two years following his reinstatement. During that time the grievor is to record a record of attendance/absenteeism which is no worse than the average of the employees in his bargaining unit at his work location. Should he fail to meet the average during any quarter in that two year period he shall be subject to termination, regardless of the reason for the absences incurred.

March 18, 2013

MICHEL G. PICHER
ARBITRATOR