

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4219**

Heard in Montreal July 9, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The issuance of 20 demerits for being late for rules class and failing to book back on after Company business; and the resulting discharge for accumulation of demerits of Mr. David Carr.

JOINT STATEMENT OF ISSUE:

Mr. David Carr was an engineer in Capreol. He was scheduled to attend rules class on December 11, 2012 to December 13, 2012 (3 days). On December 11, 2012, he failed to report for rules class and was called by the supervisor. He stated he did not know that he had rules but would come in. He arrived about one hour late at 0905. Following the end of rules class on December 13, 2012, Mr. Carr did not book any rest (as he could have under the collective agreement) but failed to book back on from Company business until 0859 on December 14, 2012. An investigation was subsequently held and 20 demerits were issued. Mr. Carr was then discharged for accumulation of demerits.

The Union's position is that he did not confirm his attendance at rules class. The Union also contends the conduct did not warrant demerits and at best warranted a written reprimand. The Union further asserts that he was honest and forthright in the investigation. The Company does not agree with the Union's position. The Company asserts that demerits were warranted and that the 20 demerits issued were reasonable. As a result, his discipline record was at 70 demerits and thus discharge was appropriate in all the circumstances.

**FOR THE UNION:
(SGD.) P. Vickers
General Chairman**

**FOR THE COMPANY:
(SGD.) M. Marshall
Senior Labour Relations**

There appeared on behalf of the Company:

D. Gagne	– Senior Labor Relations Manager, Montreal
D. Larouche	– Labor Relations Manager, Montreal
G. Hare	– Superintendent,
S. Fusco	– Senior Human Resources Manager, Toronto

V. Paquet – Labor Relations Manager, Toronto
H. Charron – Intern, Labor Relations, Montreal

There appeared on behalf of the Union:

K. Stuebing – Counsel, Toronto
P. Vickers – Retired General Chairman, Sarnia
R. Caldwell – General Chairman, Bancroft
D. Carr – Grievor, Sudbury

AWARD OF THE ARBITRATOR

The record before the Arbitrator confirms that the grievor did appear late for Rules class and at the conclusion of the Rules instruction failed to book back on to work in a timely fashion. I am satisfied that both shortcomings on his part rendered him liable to discipline.

I am satisfied that the grievor did receive proper notice, through the CATS systems, of his need to attend a Rules class on December 11 through December 13, 2012 and that he failed to take proper note of that communication. He was also untimely in booking back on following the end of the Rules class on December 13, 2012.

The grievor's record confirms that he has received discipline on more than one occasion in the past for what would appear to be chronic attendance problems. While those may be to some extent mitigated by the fact that he bears the burden of being a single parent, that status cannot obviously shield him from discipline for genuine and recurring attendance problems.

At the time of the culminating incident the grievor's record stood at fifty demerits. As a result, the issuing of twenty demerits for the events surrounding his Rules class resulted in his termination for the accumulation of demerits. In light of Mr. Carr's twenty-four years of service, the Arbitrator is satisfied that it is not inappropriate to give him second chance to demonstrate that he can be faithful in his obligation of timely attendance at work. In the result, the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost.

July 12, 2013

MICHEL G. PICHER
ARBITRATOR