

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4223**

Heard in Montreal, July 10, 2013

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The discharge of Conductor Bradley Marshall for while in the Locomotive Engineers training program for "circumstances surrounding the irregularities of time claim submissions while Student Locomotive Engineer training between January 7<sup>th</sup> and January 19<sup>th</sup>, 2013.

**JOINT STATEMENT OF ISSUE:**

Mr. Marshall was a student locomotive engineer and worked out of Capreol. Mr. Marshall was out of the country from January 9<sup>th</sup> to January 16<sup>th</sup>, 2013. Mr. Marshall submitted time claims for dates that he was out of the country. On January 31<sup>st</sup>, 2013 Mr. Marshall was required to attend a formal statement in connection with circumstances surrounding the alleged irregularities of time claim submissions while Student Locomotive Engineer training January 7<sup>th</sup> and January 19<sup>th</sup>, 2013. As a result of this investigation the Company on February 5<sup>th</sup> 2013 assessed Mr. Marshall with discharge. The Union submits that Mr. Marshall had booked Personal Leave Days on January 7, 11, 15 and 19. The Union submits Mr. Marshall followed the contract and submitted claims. The Union further submits that the discipline assessed was unwarranted, discriminatory and disproportionate based on the facts and mitigation and in the very least grossly excessive. The Union seeks to have Mr. Marshall reinstated to his employment and made whole for all lost wages and benefits from the time of his discharge on February 5<sup>th</sup>, 2013.

The Unions position: Article 66.10 sets out payment of an all-inclusive weekly rate while in the Company's training program while an employee is available for service. Mr. Marshall signed and followed the contract as it was explained to him on August 24<sup>th</sup>, 2012.

The Company's position: The Company disagrees with the Union's position. In light of the circumstances of the incident, the Company asserts that discharge is warranted.

**FOR THE UNION:**  
**(SGD.) J. Robbins**  
General Chairperson

**FOR THE COMPANY:**  
**(SGD.) V. Paquet (on behalf of) J. Orr**  
Senior Vice President Operations

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
D. Gagne	– Senior Labour Relations Manager, Montreal

M. Marshall	– Senior Labour Relations Manager, Toronto
B. Glass	– Senior Engine Service Officer, Toronto
G. Hare	– Superintendent, NOD, Capreol
D. Larouche	– Labour Relations Manager, Montreal

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson
P. Boucher	– Arbitration Coordinator, Belleville
D. Psychogios	– Local Chairman CP Yard, Montreal
B. Marshall	– Grievor, Capreol

### **AWARD OF THE ARBITRATOR**

The record reveals that the grievor was employed as a student locomotive engineer/conductor in Capreol. In January 2013 Mr. Marshall took some time off for a holiday trip to Costa Rica and between January 9 and January 16, 2013 he was out of the country and in Costa Rica.

Upon his return from Costa Rica Mr. Marshall submitted time claims for January 7, 10, 11, 14 and 15, of 2013. It is common ground that the grievor booked three personal leave days (PLD's) for three of the days in question, January 7, 11, and 15. Subsequently he claimed payment for those days and only removed his claims when he received notice that some irregularity had been determined in his wage claims. It is common ground that the claims which he made were "stand alone claims" which would normally involve a review and scrutiny by a timekeeper.

The grievor's explanation is that he simply made an error. As he put it, during the course of the Company's investigation "I erred in my claims. I claimed the 7<sup>th</sup> but should

have claimed the 9<sup>th</sup>. I claimed the 11<sup>th</sup> but should have claimed the 13<sup>th</sup>. I miss-claimed the 15<sup>th</sup> but I corrected that. I cancelled that claim when I realized what day it was.

The fundamental issue in this grievance is whether the grievor deliberately tried to defraud the Company by making wage claims for dates on which he was not in fact available to perform any work. Bearing in mind that the burden of proof is upon the Company and that fraud is to be established by clear and cogent evidence, I am not satisfied that the Company has proven that Mr. Marshall in fact attempted to claim wages in a fraudulent manner. I am satisfied that he was reckless and negligent in the manner in which he proceeded to make his claims, and that his conduct did reasonably give the Company cause for concern and lead to the dispute that is now before me. In the circumstances, I am satisfied that it is appropriate to direct the grievor's return to work, albeit without compensation.

The grievance is therefore allowed, in part. The grievor shall be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. Any notations of discipline in relation to the wage claims which led to his termination shall be removed from his disciplinary record and the period between his termination and reinstatement shall be recorded as a suspension for his negligence in the making of incorrect wage claims.

July 12, 2013

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MICHEL G. PICHER  
ARBITRATOR