

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4226

Heard in Montreal, July 11, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the termination of Conductor Lucien Masse.

JOINT STATEMENT OF ISSUE:

On August 31, 2012, Conductor Masse was discharged for “conduct unbecoming as an employee of Canadian Pacific, as shown by your fraudulent claims of September 26, 2011 and February 27, 2012, while working as a Conductor in Montreal.”

The Union contends that Conductor Masse’s dismissal is unjustified, unwarranted and excessive in all of the circumstances. The Union requests that the discipline be removed in its entirety, that Conductor Masse be ordered reinstated forthwith without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union’s request.

FOR THE UNION:

(SGD.) W. Apsey

Vice General Chairperson

FOR THE COMPANY:

(SGD.) M. Chernenkoff

Labour Relations Officer

There appeared on behalf of the Company:

J. Dorais	– Director Crew Ressources, Calgary
D. Freeborn	– Director, Labour Relations
R. Hampel	– Counsel, Calgary
M. Chernenkoff	– Labour Relations Officer, Calgary
A. Becker	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

S. Beauchamp	– Counsel, Montreal
B. Hiller	– General Chairman, Toronto
R. Peloquin	– Vice General Chairman, Montreal
B. Brunet	– General Chairman, Montreal
L. Masse	– Grievor, Montreal

AWARD OF THE ARBITRATOR

There is little doubt but that the grievor did improperly submit time claims on February 27, 2012. He was terminated by the Company by reason of its conclusion that he deliberately submitted fraudulent time claims to enhance his own earnings.

It is common ground that the grievor was employed as a conductor, working split shifts on the AMT commuter train in Montreal. On September 26 and February 27, he entered the time claims for himself and his crew members in the CMA computer system. In doing so he correctly entered what is termed the "RN code" for his two locomotive engineers. That ensured that they would not be paid improperly for the time they did not work between their split shifts. However he failed to enter the same RN code for his own wage claim which resulted in an over payment to him in excess of two hundred dollars over his proper daily wage rate.

Upon a review of the evidence I am satisfied that what occurred was an inadvertent oversight on the part of the grievor, and not a deliberate attempt to defraud his employer. In this case, as in an earlier decision involving the grievor (CROA 3379) I am satisfied that there was no deliberate attempt at fraud on the part of the grievor. There was, however, a concerning level of negligence or indifference on his part, which in my view was deserving of a serious measure of discipline. Mr. Masse must also appreciate that while this award reinstates him into his employment, any further

incidents involving an irregularity in his wage claims may have the most serious of consequences for his employment security.

The grievance is therefore 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