

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4241

Heard in Montreal, September 12, 2013

Concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

And

TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Discipline assessed to, and dismissal of Mr. P.

UNION's ExPARTE STATEMENT OF ISSUE:

On April 10, 2013, the grievor, Mr. P, was issued three Forms 200 all dated April 4, 2013. The first assessed him with 30 demerits for an unauthorized absence on December 24, 2012. The second assessed him with 45 demerits for unbecoming conduct as evidenced by his posting allegedly inappropriate comments on a Facebook page. And the third advised him that he was being dismissed for an accumulation of demerits. The Union disagreed with all of these assessments and grieved.

The Union contends that: Mitigating factors (including personal and health issues) existed that should have served to reduce the discipline assessed. The Union had advised the Company that the grievor's behaviour in the latter part of 2012 had changed and was likely related to the personal issues he was facing (which included a mood disorder that the Company was advised about no later than the beginning of March 2013). The Union urged the Company to help the grievor to deal with his issues but it refused to do so. The Company overreacted in this case, assessing far more discipline than was appropriate in the circumstances. The discipline assessed the grievor was unfair and unwarranted. The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all hours and benefits lost.

The Company denies the Union's contentions and declines the Union's request.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

G. Zabarelo
R. Bossert

– Director Human Resources, North Bay
– Superintendent M of W, North Bay

There appeared on behalf of the Union:

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

AWARD OF THE ARBITRATOR

Prior to the events here under consideration the grievor's disciplinary record stood at fifty-five demerits. He was assessed thirty demerits for being absent without leave on December 24, 2012 and subsequently received forty-five demerits for inappropriate remarks which he posted on Facebook. I am satisfied that both incidents merited discipline. The only issue is the appropriate disciplinary outcome, in all of the circumstances.

The Union draws to the Arbitrator's attention certain significant mitigating factors. The record confirms that the grievor Mr. P was under care for a mood disorder problem. That is confirmed in communications filed before the Arbitrator from both a social worker/ counsellor who was dealing with grievor in respect of mood disorders at the time of the events here under examination as well as a letter from Dr. Gene M. Corbin from the Timiskaming hospital confirming concerns that the grievor "might be suffering from mood disorder, possible depression".

I consider it significant that these documents were not supplied to the Company at the time of the grievor's disciplinary investigations. Nor, it should be stressed, did Mr. P himself make any effort to apprise the employer of his medical condition or the fact he was in receipt of both counselling and prescription medication for a mood disorder. In these circumstances I do not consider this an appropriate case for any order of

compensation, although I do deem it appropriate to exercise my discretion to reinstate the grievor into his employment, subject to certain conditions.

The grievance is therefore, allowed in part. The Arbitrator directs that Mr. P be reinstated into his employment forthwith, subject to a medical evaluation confirming his fitness to work. He shall be reinstated without loss of seniority and without compensation for any wages or benefits lost.

September 13, 2013

MICHEL G. PICHER
ARBITRATOR