

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4267**

Heard in Montreal, December 10, 2013

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Discipline assessed Mr. Pierre Labbee while working as a Locomotive Engineer and his ultimate dismissal for accumulation of demerits on February 21, 2013.

**JOINT STATEMENT OF ISSUE:**

On January 8, 2013, Locomotive Engineer Pierre Labbee was assigned to training for Montrain service in Montreal. Following an investigation, Mr. Labbee was found to have left his assignment early, without authorization and also having omitted to inform the Company of his subsequent absence the next day on January 9, 2013. He was assessed 20 demerits for the following reason: "Because you left work without authorization on January 8, 2013 and omitted to inform the Company of your absence at work on January 9, 2013".

A second investigation was taken in relation to having submitted a time claim for the full eight hours on the day that he left early on January 8, 2013. Locomotive Engineer Labbee was assessed 10 demerits for irregularities on his working ticket on January 8, 2013. Mr. Labbee was discharged for an accumulation of demerits on February 21, 2013. In consideration of all of the above it is the Union's position that the discipline and/or discharge of Mr. Labbee was unwarranted and therefore requests Mr. Labbee's reinstatement, without loss of seniority and benefits and compensated for all loss of wages.

In the alternative, that Mr. Labbee be reinstated under the terms and conditions as deemed appropriate by the Arbitrator. In light of the discharge of the Grievor it is the additional position of the Union that all grieved discipline assessed Mr. Labbee is within the jurisdiction of the Arbitrator for consideration.

The Company does not agree.

**FOR THE UNION:**

**(SGD.) R. Caldwell**

**General Chairman TCRC Central LE**

**FOR THE COMPANY:**

**(SGD.) D. Gagne for J. Orr**

**Vice President Eastern Region**

There appeared on behalf of the Company:

D. Gagne	– Senior Labour Relations Manager, Montreal
D. Larouche	– Labour Relations Manager, Montreal
D. Dobie	– Superintendent, Montreal

A. Daigle – Director Labour Relations, Montreal  
V. Paquet – Director Labour Relations, Montreal

There appeared on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto  
R. Caldwell – General Chairman, Bancroft  
J. Lennie – Vice General Chairman, Sarnia  
P. Labbee – Grievor, Hawkesbury

### **AWARD OF THE ARBITRATOR**

The evidence before me confirms that on January 8, 2013 the grievor was assigned as locomotive trainee on the Montrain passenger commuter service in Montreal. He was scheduled to work from 11:40 to 19:40. However, he left work at 16:06 by reason of feeling ill. There appears to be no dispute that the grievor proceeded to the St. Eustache garage, his on duty location, and left at 16:06 without advising a supervisor or calling the CMC to apprise them of his condition or his decision to leave work. The following day, January 9, 2013 he again did not appear at work, and did not call to advise the Company of his absence or the reasons for it. It is only when CMC supervisor Claude Bourbonnais called the grievor at home on the 9<sup>th</sup> that the Company was advised that he was not fit to work that day.

The record also confirms that when he entered his time claim for his work on January 8, apparently on January 14, 2013, Mr. Labbee claimed the entire work day of January 8, 2013, notwithstanding that he had left roughly half-way through the day. Following two separate disciplinary investigations the grievor was assessed twenty demerits for leaving work without authorization, on January 8<sup>th</sup>, 2013 as well as is unauthorized absence from work on January 9, 2013. A further ten demerits were issued for irregularities in respect of his time claim for January 8, 2013.

The Arbitrator cannot dispute the position of the Company with respect to the liability of the grievor to a serious degree of discipline, in all of the circumstances reviewed above. The sole issue in the instant case is whether the assessment of thirty demerits, resulting in the grievor's dismissal for the accumulation of demerits is the appropriate disciplinary outcome.

In the Arbitrator's view there are mitigating factors to be taken into account. Significant among them is that Mr. Labbee is an employee of more than thirty two years of service. While his record is not without blemish, it appears that he was discipline free from 2008 until the events here under consideration, some five years later. In the circumstances I am satisfied that it is not inappropriate to provide the grievor another opportunity to demonstrate that he can be a productive employee who respects his obligation to communicate fully with the Company in respect of any issue with respect to attendance and absenteeism.

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.

December 16, 2013

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MICHEL G. PICHER  
ARBITRATOR