CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4281

Heard in Montreal, January 16, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge changed to suspension of Jeffrey Brown from February 18 to May 1**,** 2011 for "the irregularities surrounding your SLE training between June 24, 2010 and December 27, 2010, specifically the fraudulent time claims submitted throughout this time period".

JOINT STATEMENT OF ISSUE:

Mr. Brown was a conductor and worked out of Capreol. He had just over 3 years' service at the time of discharge on February 18, 2011.

On January 19, 2011, Mr. Brown was required to attend a formal employee statement "in connection with the alleged irregularities surrounding his SLE training between June 24, 2010 and December 27, 2010. As a result of the findings, Mr. Brown was discharged. The Union filed a Step 3 grievance on March 30, 2011.

On April 28, 2011, the Company met with Mr. Brown and an agreement was made to reinstate him effective May 3, 2011.

The Union alleges that the investigation was not fair and impartial and that the discipline assessed was unwarranted and in the very least excessive.

The Company disagrees. The Company also asserts that grievance is untimely. While the parties considered a joint conference in the summer of 2011, this grievance was not processed by the Union and no Notice for Arbitration was filed until June 13, 2013, beyond the time limits in the collective agreement.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) J. Robbins	**(SGD.) V. Paquet**
General Chairperson	**Labour Relations Manager**

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
D. Larouche	– Labour Relations Manager, Montreal
M. Marshall	– Senior Labour Relations Manager, Toronto
A. Daigle	– Labour Relations Manager, Montreal
D. Gagné	– Senior Labour Relations Manager, Montreal

There appeared on behalf of the Union:

A. Stevens	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson
R. Caldwell	– General Chairman, Bancroft.

AWARD OF THE ARBITRATOR

This matter concerns CN's ("the Company's) assessment of a 76-day suspension against Mr. Jeff Brown ("the grievor") for the irregularities surrounding his SLE training between June 24, 2010 and December 10, 2010, specifically the fraudulent time claims submitted throughout this time period.

The real issue before me is whether the 76-day suspension, imposed in the circumstances described below, is the appropriate penalty.

On January 19, 2011, the grievor was required to attend for an employee statement in connection with irregularities surrounding his SLE training between June 24, 2010 and December 27, 2010. On February 16, 2011, the grievor was discharged for the irregularities, in connection with time claims, that the Company alleged had been fraudulently submitted. At that time of his discharge, the grievor had three and a half years service with the Company. On April 29, 2011, the Company met with the grievor. On May 3, 2011, the Company reinstated the grievor.

The time claims at issue were all submitted as IP claims. In submitting such a claim, an employee signals to the Company that his claim may be uncertain and requires a ruling as to its correctness.

The claims relied on by the Company to sustain the 76-day suspension made by the grievor fall into 4 categories. The first relates to claims made by the grievor for days following Personal Leave Days ("PLDs") on August 14, 22, October 9, 18, and 30, 2010. On those days the grievor was unavailable for the return trip with the locomotive trainer he would have gone out with but for his having booked the PLDs referenced above. The second category relates to wages claimed for a day when the grievor had booked off sick, specifically June 25, 2010. The third relates to claims submitted for time the grievor did not work between September 17 and 25, 2010, and then again between October 31 and November 6, 2010, when the locomotive engineers to whom the grievor had been assigned, namely locomotive engineer Dines and locomotive engineer Moore, respectively, were on vacation. Finally, on December 6, 2010, the grievor booked a PLD day yet submitted a claim for payment.

Decision

It is apparent from the chronology set out above that after the Company discharged the grievor it reassessed its case and determined that it would not be in the position to continue to assert that the grievor had made claims for wages fraudulently. For this reason, as stated above, the real issue here is whether the 76-day suspension, is the appropriate penalty.

In addition to challenging the discipline assessed, the Union submits that the grievor was denied a fair and impartial investigation. I cannot sustain this latter submission. Briefly, the Union argued that the notice to appear for the investigative statement was vague. I am satisfied that the grievor was aware of the nature of the irregularities that the Company sought to investigate.

At the hearing itself, the Union submitted that because certain of the time claims the Company relies on to support the 76-day suspension were not referenced in the Company's step 3 response, I am precluded from relying upon them. I disagree. My jurisdiction derives from the Joint Statement of Issue. So long as the alleged claims fall within the timeframe set out in that document, they are properly before me.

The PI Claims

In respect of the wage claims made for days following PLDs when the grievor was unavailable for his return trips, the evidence before me leads me to conclude that the grievor believed he was entitled to make such claims. After the grievor was reinstated, the Company explicitly addressed with all SLEs that that category of days do not quality for a wage claim. Now SLEs sign off on the fact that this has specifically been conveyed to them as part of their training. In the grievor's circumstances, as he submitted IP claims in relation to these dates, discipline is unwarranted.

With respect to the December 6, 2010, date, the grievor knew that he was not entitled to claim payment for a PLD day. The grievor's explanation with respect to this claim is that he made a mistake. He was careless in doing so.

The sick day for which the grievor submitted an IP claim, June 25, 2010, is somewhat problematic. During his statement, the grievor stated that he received no instruction in placing times claims for PLD days or booking sick. That statement was not accurate. The grievor did sign off on a document from training where he acknowledged that claims could not be made if training is missed due to personal reasons and he was made aware that when sick, he was to book off with the CMC. The Company, has, however, since the grievor's reinstatement, explicitly made clear that sick days are not to be claimed, and SLEs now sign off on this also.

The category of claims made when the grievor did not work when the locomotive engineers to whom he was assigned were on vacation raises significant concerns about the grievor's integrity in submitting them. The grievor's explanation when asked why he had claimed the training rate when locomotive engineer Dines was on vacation between September 17 and 25, 2010, was that, to the best of his knowledge, his turn never went out during that period. In fact, the grievor had continued to train in the CH02 pool since August 22, 2010, when locomotive engineer Dines first went off on vacation. After September 16, 2010, however, the grievor did not go out on the CH02 pool, even though his turn did go out twice. This highly suggests that the grievor was well aware that he was expected to endeavour to complete trips during between September 17 and

25, 2010, as he had done so previously. In submitting claims for this period, the grievor sought to take advantage of his trainer's vacation to not work and obtain payment nonetheless.

In a similar vein, the grievor, in response to questions about why he had not worked between October 31 and November 6, 2010, when the locomotive engineer he was then assigned to, Moore, was on vacation, the grievor stated that at the time he was training with locomotive engineer Dines. In fact, the grievor's previous trip with locomotive engineer Dines had been approximately two weeks prior, on October 13, 2010, and he had already been on two trips with locomotive engineer Moore.

In my view, despite the fact that these were IP claims, the grievor was less than forthcoming with the Company regarding the circumstances surrounding his having made them. In so doing, the grievor did so in an effort to take advantage of his trainer's vacation schedule to obtain payment without working. The grievor knew from past experience that, in order to make a legitimate wage claim, he had to continue training in the absence of the vacationing locomotive engineer.

Having regard to the above, I conclude that at least some of the wage claims submitted by the grievor were not honestly made. In addition the grievor mislead the investigation by claiming to have continued training with locomotive engineer Dines during Moore's vacation. That is serious misconduct, even though the wage claims were submitted in the form of IPs. However, the 76-day suspension imposed by the Company

is excessive. That suspension was imposed, because the Company, realizing that it could not support a disciplinary response of discharge for fraud here, did not want to compensate lost wages to the grievor. I do not accept that that is the appropriate penalty in this case.

Therefore, the grievance is allowed, in part. At the time of his discharge, the grievor's disciplinary record consisted of two written reprimands. His Attendance Management Standards ("AMS") has never been questioned. The 76-day suspension shall be removed form the grievor's disciplinary record and he is to be compensated for all lost wages and benefits. The suspension is to be replaced with 30 demerit points for the lack of integrity displayed by him in connection with time claims made when the trainers he was following were on vacation.

January 27, 2014

CHRISTINE SCHMIDT
ARBITRATOR