

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4293

Heard in Calgary, March 11, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor Darren Langley of the discipline of (15) fifteen demerit marks for failing to comply with the instructions of Company Officer by not submitting medical documentation to support your alleged illness from August 21-23, 2012 as requested under the Canada Labour Code.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On August 21, 2012, Mr. Langley booked off the working board in sick status at 22:36. Mr. Langley booked back on the working board at 20:59 on 23 August 2012. A Cats broadcast message was placed on Mr. Langley's profile on 22 August 2013 informing him to provide medical information and a copy of the Cats broadcast message within 15 days of his return to work to Trainmaster Mannella.

On September 30, 2012, Mr. Langley was issued a notice to appear for an investigation – schedule for October 2, 2012 – with respect to this matter. Mr. Langley attended on October 2, 2012. Mr. Langley was issued a form 780 assessing his record with 15 demerits marks on October 13, 2012.

The Union contends that the discipline assessed Mr. Langley's record was unwarranted given the circumstances. The Union further contends that the discipline assessed Mr. Langley's record is contrary to the Canada Labour Code and should be expunged and that he be made whole for all losses.

FOR THE UNION:

(SGD.) R.S. Donegan on behalf of R. Hackl
Vice General Chairman

FOR THE COMPANY:

(SGD.)

There appeared on behalf of the Company:

P. Payne	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
D. Crossan	– Manager Labour Relations, Prince George
J. Girard	– Counsel, Montreal

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatoon
D. Finnsen	– Vice President, Calgary
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson

AWARD OF THE ARBITRATOR

The facts are not substantially in dispute. On August 21, 2012, the grievor booked off sick at 20:36 hours. He booked back on two days later, on August 23, 2012 at 20:59 hours. Prior to his return to work, the Company notified the grievor, by way of a CATS Message, of the requirement to provide a medical certificate to support his absence. The notice reads:

Due to your absence for alleged sickness, CN is requesting that you provide a certificate from a qualified medical practitioner certifying that you were unfit to work due to illness or injury for the period indicated below. This request is made in accordance with article 239 (1), in Part III of the Canada Labour Code. This notice serves as written notification to provide medical information within 15 days of your return to work.

The Doctors note, along with a copy of this written request was to be delivered to Trainmaster Jim Manella.

Justification for absence from August 21, 2012.

Benjill Jessup
Superintendent

The deadline imposed by the Company for the production of the medical certificate came and went. On September 30, 2012 the grievor was issued a notice to appear for an investigation on October 2, 2012.

At the formal investigation the grievor produced the medical certificate supporting his absence from work. The Company accepts that the grievor was ill.

A careful review of the note together with the receipt of payment can lead to only one conclusion: prior to the 3 PM investigation meeting on October 2, 2012, the grievor went to obtain the medical certificate.

The grievor's formal statement reveals that he was well aware of the Company's request that he produce a medical certificate within 15 days of his return to work. In response to being asked why he did not provide it within the Company's stipulated timeframe the grievor answered:

I tried to give the Jasper Supervisors Dr.'s notes but nobody was ever around. I could not have worked at the time and I felt that I did not need a doctor to verify that my illness was a valid reason for missing work.

The Company was under the misapprehension that the comment made during the investigation, namely that "I tried to give the Jasper Supervisors Dr.'s notes but that no one was ever around" meant that the grievor had the medical certificate but simply did not hand it in. The reference to "notes", however, must have been a reference to other occasions where the grievor had intended to provide medical certificates to the Company.

During the investigation the grievor apologized for not providing a medical certificate within 15 days of his return. He explained:

I did not realize the importance the company places on Dr.'s notes. It was a brief, common illness that prevented me from going to work. It has been a problem in

the past to get a Dr.'s appointment on short notice. After I booked on I worked harder than usual to regain lost earnings. In the future I will be respectful of CN's policy of providing a doctor's note in a timely manner.

In the circumstances set out above the Company issued 15 demerit points against the grievor for failing to provide the medical note within fifteen days from when he returned to work contrary to its direction.

Decision

The Union argues that the discipline assessed against the grievor was unwarranted and that it was contrary to the *Code*. More specifically, it contends that the discipline was imposed as a result of the Company's misinterpretation of the *Code*. Further it asserts that the discipline imposed was without just cause.

Section 239 of the *Code* reads:

239. (1) subject to subsection (1.1), no employer shall dismiss, suspend, lay off, demote or discipline an employee because of absence due to illness if

(a) the employee has completed three consecutive months of continuous employment by the employer prior to the absent;

(b) the period of absence does not exceed 17 weeks; and

(c) the employee, if requested in writing by the employer within 15 days after his return to work, provides the employer with a certificate of a qualified practitioner certifying that the employee was incapable of working due to illness or injury for a specified period of time, and that that period of time coincides with the absence of the employee from work.

The parties agree that the Company's authority to demand a doctor's note from an employee arises from section 239 (1) (c) of the *Code*.

The Company did not discipline the grievor because he was ill. The Company disciplined the grievor because he knew he was expected to produce a medical certificate within 15 days of his return to work yet failed to produce one until October 2, 2012.

As pointed out by the Union, the *Code* is silent on the timeline within which an employee who has been asked to produce a medical certificate employee must produce it. It is therefore within management's rights to stipulate a time frame (a reasonable one) for its production. I am therefore unable to find that the Company misinterpreted or misapplied the *Code*.

The Union also argues that the grievor was disciplined without just cause. It argues that the Company failed to apply its own attendance management policy in making the request for a medical certificate.

It is open to the parties to bargain the circumstances or conditions under which the Company is entitled to request a medical note. In this case, the Company has an attendance management policy that has sustained arbitral scrutiny (see **CROA 3444**). I am unable to find that the Company violated its own policy when it requested that the grievor provide a note on August 22, 2012. I am therefore unable to find that the grievor was disciplined without just cause.

Nevertheless, I am of the view that the imposition of 15 demerits is excessive in the circumstances. While the grievor is a relatively new employee, he has no discipline history. It is clear from the statement reproduced above that the grievor appreciates the importance the Company places on the production of medical certificates when it requests them. Moreover, this situation could probably have been avoided had the Company simply reinforced with the grievor the importance of meeting the deadline for the production of the medical certificate.

Having regard to all of the above, I direct that the 15 demerits assessed against the grievor be removed from his record and that a substituted discipline in the form of a written reprimand be placed on his employment record.

March 20, 2014



CHRISTINE SCHMIDT
ARBITRATOR