

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4307

Heard in Montreal, May 13, 2014

Concerning

CANADIAN NATIONAL RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
CONDUCTORS, TRAINPERSONS, YARDPERSONS**

DISPUTE:

Grievance on behalf of Conductor Chase Jerlo of Winnipeg, Manitoba, appealing his discharge effective July 30, 2013, for "Your deliberate manipulation of the CATS system to obtain earnings that you were not entitled to, for your tour of duty as a student locomotive engineer on June 9, 2013, when you overrode the single-subdivision rate of pay, and instead entered the higher extended run rate of pay. Time held out of service between July 22 and July 30th 2013 to count as suspension."

COMPANY'S EXPARTE STATEMENT OF ISSUE:

On June 9, 2013, the grievor worked as a Student Locomotive Engineer (SLE) on Train SL54541 08 from Winnipeg to Brandon. Following his tour of duty, Mr. Jerlo entered his time claim in the CATS system overriding the automatically presented amount of \$247.17 for a single subdivision training trip, and adjusting the claim to \$494.34; the extended-run subdivision training rate.

On July 22, 2013, the Company conducted an investigation and determined that Mr. Jerlo had deliberately manipulated the CATS pay system to claim a higher rate of pay to which he was not entitled, and discharged him.

The Union disagrees with the discharge assessed to Mr. Jerlo, alleged that the grievor's disciplinary investigation was not conducted in a manner that was fair and impartial in accordance with Article 117 of Agreement 4.3, and has requested that he be reinstated and made whole.

The Company disagrees with the Union's contentions.

**FOR THE UNION:
(SGD.)**

**FOR THE COMPANY:
(SGD.) D. Brodie for K. Madigan
VP Human Resources**

There appeared on behalf of the Company:

K. Morris	– Senior Manager Labour Relations, Edmonton
D. Crossan	– Manager Labour Relations, Edmonton
A. Daigle	– Manager Labour Relations, Montreal
D. Gagne	– Senior Manager Labour Relations, Montreal

D. Larouche – Manager Labour Relations, Montreal
S. Ziemer – Manager Human Resources, Vancouver

There appeared on behalf of the Union:

D. Ellickson – Counsel, Caley Wray, Toronto
R. Hackl – General Chairman, Saskatoon
R. Caldwell – General Chairman, Bancroft

AWARD OF THE ARBITRATOR

The record confirms that the grievor improperly claimed wages to which he was not entitled in relation to a training run as an SLE on June 9, 2013 operating from Winnipeg to Brandon Manitoba. Although he had operated on a single subdivision, and the CATS system automatically presented him with the proper payment amount of \$247.17, the grievor adjusted the ticket to claim \$494.34, the amount which would relate to operating an extended run. When an audit disclosed the discrepancy an investigation ensued and the grievor was discharged for deliberate manipulation of the CATS system to obtain improper earnings.

The Union makes a preliminary submission that the grievor was denied a fair and impartial investigation. Effectively, it relies on the fact that the Union representative at the grievor's investigation was denied the opportunity to present evidence to the effect that in the past the grievor had made a number of erroneous wage claims, all of which in fact had operated to his detriment. What the Union sought to establish is that in fact the grievor had an uncertain command of the CATS wage claim system. The investigating officer did not allow that evidence to be presented at the investigation, ruling it to be irrelevant. The Union also points to the investigating officer's reference, during the investigation, to prior discipline

which the grievor had received as an indication that he did not bring the necessary fairness and impartiality to the process.

I am not persuaded that the Union submission in that regard is compelling. Firstly, it is well established that an investigating officer is not to be held to a judicial or quasi-judicial standard in the conduct of a disciplinary investigation. While I would tend to agree that reference to any prior discipline which the grievor may have received was inappropriate, I do not consider that it was so egregious as to violate the standard of a fair and impartial investigation. For these reasons I am not satisfied that the Union's objection with respect to the quality of the investigation can be sustained. Moreover, while it may be that the Union might have wished to put before the investigating officer the fact that on prior occasions the grievor had erroneously under claimed his wages, from the standpoint of relevance I am compelled to agree with the Officer that those facts had no effective bearing on the issue of whether the grievor had knowingly and deliberately changed his wage entry in the CATS system to claim wages to which he was not entitled.

I find the evidence of the grievor's actions in fact to be concerning. It is not disputed that on the day in question the grievor performed his SLE training tour of duty on a single subdivision. At the conclusion of that service the CATS system automatically presented an amount of \$247.17, which is the wages payable for a single subdivision SLE training trip. However the grievor deliberately adjusted the ticket to claim the higher amount of \$494.34, being the amount that would attach to an extended run training exercise. During the course of his disciplinary investigation the grievor said that he made that change "accidentally" and

that once it was entered he could not make any change, stating that he believed the ticket would be caught and corrected as he had entered a comment to the effect that he was training on a Brandon train which operates on a single subdivision.

I find it difficult to accept the grievor's explanation that his deliberate substitution of a larger amount, relating to an extended run, for the proper amount for less wages attributable to a single subdivision training trip was accidental. As the Company stresses, the grievor had to enter the computer field and remove the proper wage amount which appeared on the screen and enter an improper higher amount, the precise amount which applies to operating on an extended run subdivision training trip. On balance, I am compelled to accept the Company's submission that the grievor's actions were knowing and deliberate, and cannot be qualified as an "accidental slip". I also must share the Company's skepticism with respect to the grievor's claim that his comment would have properly flagged the situation. The comment which he entered merely related that he had been doing SLE training with Jason Ruigrok on a given train. As there is no reference in the comments to the subdivision upon which he had operated or any meaningful description of what would be an extended run, I find the grievor's explanation in that regard to be highly dubious. Nor do I take substantial comfort from his answer that having realised his error he simply let it be, based on his belief that his error would be caught on the assumption that his claim would be audited and corrected. Given that the auditing process is said to be random, I find that less than a compelling explanation.

On the whole, I am not persuaded that the material before me would justify interfering with the Company's decision to terminate the grievor's services. In coming to that conclusion I consider it notable that Mr. Jerlo had earlier received a seventy-one day suspension for improper manipulation of the CATS system to obtain time off to which he was not entitled. His return to work following that suspension required him to sign an undertaking which it states in part: "I agree that, in the future, I will not manipulate Company records for the purposes of improperly obtaining contractual time off and will accurately and properly report my working time."

On the facts of the instant case I am compelled to share the Company's view that the grievor effectively destroyed the bond of trust essential to his employment relationship. The evidence before me confirms that the computer presented to the grievor an accurate statement of the wages to which he was entitled. For reasons he best understands, Mr. Jerlo deliberately changed the wage amount to a higher amount to which he was not entitled. On the whole, I am not satisfied that what occurred was an accident or can be explained away on the basis of the grievor's lack of sophistication with respect to the CAT system.

For all of the foregoing reasons the grievance must be dismissed.

May 20, 2014

MICHEL G. PICHER
ARBITRATOR