

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4322**

Heard in Montreal, July 8, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

The discharge of Mr. Manuel Ferreira on March 4, 2014 for the accumulation of over 60 demerit points.

JOINT STATEMENT OF ISSUE:

The Union submitted an appeal contending that given the circumstances the discipline assessed was excessive arbitrary discriminatory and unjust which lead to the grievor's unwarranted discharge. The Union's appeal requested that Mr. Ferreira assessed discipline in the form of 15 demerit points be replaced with a written reprimand and that the discipline assessed in the form of 10 demerit points be expunged from his record leaving his record at 59 demerit points, and that he be made whole for all lost earnings and benefits including pension benefits.

The Company disagrees with the Union's contentions and has declined the Union's request.

FOR THE UNION:
(SGD.) P. Jacques
Regional Chief Steward

FOR THE COMPANY:
(SGD.)B. Laidlaw
Manager Labour Relations

There appeared on behalf of the Company:

B. Laidlaw	– Manager Labour Relations, Winnipeg
R. Hasbrouck	– Manager Engineering, Prince George
S. Grou	– Senior Manager Labour Relations, Montreal

There appeared on behalf of the Union:

P. Jacques	– Regional Chief Steward, Edmonton
M. Ferreira	– Grievor, Prince George

AWARD OF THE ARBITRATOR

This grievance concerns two heads of discipline, the first being ten demerits for the grievor's failure to provide medical documentation in relation to his absence from work and the second concerning fifteen demerits assessed for his alleged violation of Rule 110 on March 4, 2014.

The Arbitrator is satisfied that the facts pertinent to the grievance are established. The record confirms that following an absence from work by reason of illness, apparently his third in a short period of time, the grievor was instructed by supervisor Gaetano Vecchio to contact Manager Rick Hasbrouck and also to bring a doctor's note in relation to his absence. It appears that the next day, in a telephone conversation with Mr. Hasbrouck the grievor asserted that he had not been to a doctor and could not provide a medical note. As it appears from the record, ten demerits were assessed against the grievor for two separate heads of alleged misconduct : "failure to follow the supervisor's instructions and not providing documentation to support your absence on February 21, 2014".

The Arbitrator has difficulty with the Company's position in respect of both heads of alleged misconduct. It appears that the grievor was told on February 20th, by Supervisor Vecchio to contact management Rick Hasbrouck he did not do so that day, but did the next day, when he was reminded by Supervisor Vecchio. It does not appear disputed that within a matter of one or two days the grievor did contact Mr. Hasbrouck

from Supervisor Vecchio's office advising him that he had not seen a doctor and could not provide a medical note.

I have substantial difficulty with the Company's position in respect of the assessment of ten demerits against the grievor for the basis of these facts. While it might not be unreasonable to expect that a doctor's note would be necessary in the event of a multiday absence, the opposite is generally true with respect to the absence on a single day, absent some other rule or understanding. On the foregoing basis I am satisfied that it was not appropriate for the Company to assess the ten demerits against Mr. Ferreira's record for failing to follow instructions and provide a doctor's note in relation to his one day absence.

The next head of discipline involves the assessment of fifteen demerits to the grievor's record for the his alleged violation of Rule 110 on March 4, 2014. It does not appear disputed that on that occasion he was observed as remaining in a Company truck, and failing to proceed to the side of a track to perform a pull-by inspection of a passing train. There is no dispute that he was required to perform the pull-by inspection, and that he failed to do so, remaining in the warmth of a Company truck where, it appears, the external temperature was approximately minus twenty five Celsius. As the grievor's disciplinary record stood at fifty-nine demerits, he was terminated for the accumulation of demerit points with the assessment of the additional fifteen demerits following the incident of March 4, 2014.

While the Arbitrator is satisfied that the Company did have grounds to discipline the grievor in relation to his violation of Rule 110, considering the length of Mr. Ferreira's service, which dates to 1984, I am satisfied that this an appropriate case for a substitution of penalty. The grievance is therefore allowed, in part. The Arbitrator directs that the demerits assessed against Mr. Ferreira in relation to both the absence of February 21, 2014 and his violation of Rule 110 on March 4, 2014 be removed from his record and that he be reinstated into his employment, without compensation for any wages or benefits lost. The period between his discharge and reinstatement shall be recorded as a suspension in relation to the incidents of February 21 and March 4, 2014.

July 14, 2014

MICHEL G. PICHER
ARBITRATOR