

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4323

Heard in Montreal, July 8, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

The discharge of Steel Bridge Worker Brian Holland, on April 12, 2013 for “unauthorised absence since October 2012 and failure to protect your assignment.”

JOINT STATEMENT OF ISSUE:

On April 5, 2013 the Company conducted a formal employee statement for Steel Bridge Worker Brian Holland. The outcome of the employee statement ultimately resulted in the discharge of employee Brian Holland on April 12, 2013 for his “unauthorized absence since October 2012 and failure to protect your assignment.”

The Union contends that Mr. Holland has been unjustly dealt with in violation of Article 1.5 of Collective Agreement 10.1.

The Company disagrees with the Unions contentions and has declined the Union’s grievance.

FOR THE UNION:
(SGD.) M. Piché
Staff Representative

FOR THE COMPANY:
(SGD.) S. Prudames
Labour Relations Officer

There appeared on behalf of the Company:

S. Prudames	– Labour Relations Officer, Toronto
J. Vieira	– Engineering, Toronto
L. Waller	– Officer Worker’s Compensation Claims, Toronto
M. Lancia	– Associate Human Resources, Winnipeg
B. Laidlaw	– Manager Labour Relations, Winnipeg
R. Hasbrouck	– Manager of Engineering, Fort St. John

There appeared on behalf of the Union:

M. Piché	– Staff Representative, Toronto
T. Cotie	– Chief Steward, Sudbury
K. Fraser	– Vice President, Hornpayne

AWARD OF THE ARBITRATOR

It is common ground that the grievor held an accommodated position of flagman at Mimico at the time of the events material to this grievance. After being absent, on or about July 25, 2012 Mr. Holland was cleared to return to his accommodated position. However, he failed to do so, subsequently requesting to be placed on vacation on or about August 16, 2012. Subsequently, on October 11, 2012 the Company was unsuccessful in attempting to contact Mr. Holland to advise him of the availability of an accommodated position. The grievor never returned that call and on October 18, 2012 the Company discovered that the grievor's phone number was no longer in service. On October 29, 2012 the assistant Chief of Engineering, Mr. Joe Machado, sent a letter to the grievor directing him to contact the Company no later than November 7, 2012. That correspondence indicated to the grievor that he was considered AWOL.

It appears that the Company next heard from the grievor on or about December 17, 2012, by way of a voice message advising Ms. Michelle Lancia, HR Associate, that Mr. Holland had moved to New Waterford, Nova Scotia and providing his new telephone number. In a subsequent telephone conversation, where the grievor asked about the possibility of being accommodated in Nova Scotia, Ms. Lancia advised him that accommodation was available for him within the Engineering group in Ontario. To that end, a formal offer of accommodation in writing was sent to the grievor at his new residence on January 8, 2013. The grievor was at the same time advised that there would be an investigation in relation to his unauthorized absence. The letter instructed the grievor to reply within seven days of receiving the letter.

By happenstance, on January 17, 2013 Ms. Lancia learned from the grievor's girlfriend, who answered Ms. Lancia's phone call to the grievor, that he was then incarcerated since January 14, 2013 for a period which she estimated to be six months. Following a failed attempt to have the grievor attend for a formal statement on February 21, 2013 in Moncton, concerning his failure to protect his accommodated assignment of January 7, 2013, the Company scheduled an investigation to take place in the Cape Breton Correctional Facility, where the grievor was incarcerated. That investigation was conducted on April 5, 2013, dealing with the grievor's ongoing absence from the workplace and failure to communicate his circumstances to the Company. Following that investigation, on April 12, 2013 the grievor was discharged for "unauthorized absence since October 2012 and failure to protect your assignment".

The Arbitrator considers the circumstances of this case to be extremely unfortunate, particularly given that the grievor is an employee of some thirty years' service. As significant as that service may be, however, the fact remains that Mr. Holland was at all times under an obligation of fidelity to the Company, both in respect of attending at work in the accommodated positions being offered to him and, in the event of his absence, providing to the Company information as to the reasons for his absence. In fact, however, the grievor effectively abandoned his employment and engaged in an extended unauthorized absence from October 2012 through April 12, 2013, the point of the grievor's discharge.

In the grievor's defense the Union submits that he had fallen into bad company, which led to his involvement with drugs and other illegal activity. While the Arbitrator has some sympathy for the grievor's personal difficulties, the record before me is less than compelling from the standpoint of any possible reinstatement of the grievor. There is nothing in the form of medical evidence to suggest that the grievor suffers from any disabilities or addictions, beyond his original accommodated physical condition. In effect, what the record discloses is an employee who, for reasons he best appreciates, effectively abandoned his employment with the Company in Ontario, moved to Nova Scotia where he became involved in criminal activity which resulted in his incarceration for theft. During all of the period in question, over a time of several months, Mr. Holland made no attempt to contact the Company or to explain his circumstances, including his incarceration. In my view it would be difficult to imagine a more clear form of abandonment of employment by an employee.

In the Arbitrator's view the record confirms that the Company was fair and reasonable at all times in its attempts to contact the grievor and to offer him accommodated employment, notwithstanding his own failure to respond to a great number of telephone messages as well as written correspondence. When the Company finally did make contact with the grievor it discovered that he was then incarcerated for robbery, in respect of a sentence which he anticipated would run from nine months to a year. As the Company later discovered, there were in fact a number of convictions against the grievor, seven in all, involving robbery, theft and the failure to attend at court

proceedings as well as to comply with conditions of an undertaking. It appears that at the time of the arbitration the grievor was residing in a halfway house in Nova Scotia.

The Company's position in the face of the record reviewed above is that the grievor's actions in abandoning his employment, failing to respond to the Company's messages, moving to Nova Scotia without notice to the Company, engaging in criminal activities and concealing his subsequent incarceration from the Company all effectively put an end to the bond of trust between the grievor and his employer.

The Arbitrator cannot disagree with that perception. For reasons he best appreciates, Mr. Holland has jeopardized an employment relationship of some thirty years. The record before the Arbitrator, including the transcript of the investigation taken in the Cape Breton Correctional Facility on April 5, 2013, is devoid of any admission on the part of the grievor with respect to the seriousness of his actions relating to his extended unauthorized absence and his concealment of his circumstances from the Company.

Upon a review of the entirety of the record, I am satisfied that the Company was fair and reasonable at all stages in its treatment of Mr. Holland and that his actions, which are tantamount to the entire abandonment of his employment without notice or explanation to the Company, did justify the termination of his services, an outcome which I am satisfied should not be disturbed.

For the foregoing reasons the grievance must be dismissed.

July 14, 2014

MICHEL G. PICHER
ARBITRATOR