CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4336

Heard in Montreal, October 14, 2014

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Michael Gordon-Tennant for Accumulation of Demerits following the receipt of 20 demerits for "Circumstances surrounding time claim irregularities between January 19 and January 26, 2013".

COMPANY'S EXPARTE STATEMENT OF ISSUE:

While working as a student locomotive engineer, Mr. Gordon-Tennant made a number of duplicate time claims while he was booked off on illness.
Upon returning from sick leave, Mr. Gordon-Tennant was required to attend a formal employee statement for "circumstances surrounding time claim irregularities between January 19 and January 26, 2013.

As a result of the findings, Mr. Gordon-Tennant was assessed 20 demerits, which subsequently resulted in his discharge for an accumulation of demerits.

It is the Union's position that when the Company discharged Mr. Gordon-Tennant, it violated articles 53.2, 62, 66.10, 82, 85 and Addendum 123 of the 4.16 Collective Agreement.
The Union further asserts that the discipline assessed was unwarranted, excessive, discriminatory and disproportionate and seeks to have the Grievor made whole.

The Company disagrees with the Union's position. In the alternative and without prejudice to the Company's position, as per the step III response, the Company reserves the right to pursue an investigation for Mr. Gordon-Tennant's unauthorized absence and subsequent failures to appear for a Company investigation pending the outcome.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.)	**(SGD.) V. Paquet**
	Labour Relations Manager

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
C. Hicks	– Assistant Manager, Pay Systems, Toronto
S. Mumby	– Assistant Supervisor, Capreol
D. Gagne	– Senior Manager, Labour Relations, Montreal

D. Larouche – Manager Labour Relations, Montreal
D. VanCauwenbergh – Director, Labour Relations, Toronto

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

AWARD OF THE ARBITRATOR

The time claim irregularities for which the Company assessed the grievor with 20 demerits relate to the grievor's duplicate time claims for pay between January 19 and 26, 2013. In addition, the grievor made claims for pay on January 25 and 26, 2013, when he did not make himself available for work.

During the relevant period, the grievor was employed as a Student Locomotive Engineer ("SLE"). He was assigned to follow the turn of Locomotive Engineer Wright ("LE Wright"). The grievor had been in the training program for approximately one year and eight months at the time he submitted the time claims at issue.

The grievor's disciplinary record stood at 55 demerit points prior to the imposition of the discipline which is the subject of the grievance before me.

The grievor followed LE Wright on Saturday January 19 and Sunday January 20, 2013. LE Wright's days off were Monday January 21 and Tuesday January 22, 2013. The grievor followed those days off. The Company did not call the grievor on either day. On Wednesday, January 23, 2013 the grievor followed LE Wright and that same day the grievor submitted pay claims for Saturday January 19 through Tuesday January 22,

2013. On Thursday January 24, 2013, the grievor followed LE Wright and submitted a pay claim for Wednesday January 23, 2013. LE Wright was off Friday, January 25 and Saturday January 26, 2013, following LE Wright on his days off. The grievor submitted time claims for January 24, 25 and 26, 2013 on January 28, 2013.

Between 23:53 hours on Friday, January 25, 2013 and Sunday, January 27, 2013 the Company made approximately 20 calls to the grievor in an attempt to notify him that he was to be removed from the training program to protect work as a Conductor. It was not until 15:46 hours on January 27, 2013 that the Company was able to reach the grievor and notify him of his status change.

The grievor went off sick after working January 28, 2013 and remained off sick through March 20, 2013.

On February 6, 2013, the grievor logged on to the payroll system (“CATS”) at 09:36 hours and made duplicate pay claims for January 19 through January 26, 2013.

The duplicate claims were caught by a Company audit and on February 13, 2013, and the Company notified the grievor that the overpayment would be recovered. On February 26, 2013, the Company notified the grievor that since he had not answered the phone through January 27, 2013 the overpayment for January 26 and January 27, 2013 would be recovered.

The grievor attended at his investigative statement on April 18, 2013. He was questioned about why he had gone into CATS and made the duplicate claims. The grievor's answer was that when he had gone into CATS on February 6, 2013, the screen was blank. The grievor stated that he therefore thought that he had submitted the original claims incorrectly.

The grievor explained that he later noticed that his time claims had been submitted in duplicate.

The Company records reveal that the only time the grievor had gone into CATS was when he logged on to make the duplicate claims at 09:36 hours on February 6, 2013. The next time he had logged onto CATS was on February 25, 2013.

The grievor could not reconcile his version of events with the Company records demonstrating that he was not in the CATS system except for the purpose of making the duplicate claims.

The grievor told the investigator that he had tried to speak with someone in payroll on February 7 or 8, 2013 to have the Company correct his error. When the investigation reconvened on April 26, 2013, the grievor's evidence became that he had called both February 7 and 8, 2013. The grievor's evidence was that no one had

answered the phone. The phone lines to the pay roll office have an option of leaving a message. The grievor did not leave any messages.

The grievor further explained that he was ultimately able to speak with an unnamed female payroll employee after the weekend. On April 26, 2013 the grievor clarified that he specifically spoke with the payroll employee on Tuesday February 12, 2013. The grievor stated that he informed the payroll employee that he had submitted his pay claims for January 19 through January 26, 2013 in duplicate. The grievor relayed to the investigator that he specifically recalled telling the payroll employee that he did not want to get into any trouble. She reassured him, told him not to worry and that the duplicates would be cut from the system.

The investigator followed up with questions about the phone number he had used to reach the payroll employee. The grievor stated that he thought he would be in a position to locate the phone records to corroborate his information by the following day. The investigative meeting was adjourned to the following day at 10:00 hours.

At 11:00 hours on April 19, 2013, the grievor contacted the local chairman to tell him that he was arranging for the telephone records to be mailed to him. The investigative statement was adjourned a second time.

On April 26, 2013, the investigation reconvened. The grievor said that he had spoken with his telephone service provider, and that it confirmed his information

verbally. However, the provider had sent the grievor the wrong phone numbers and would be re-mailing the correct ones.

Neither the grievor nor the Union ever produced the phone records that the grievor said would substantiate the fact that he had called payroll to let the Company know that he had made the duplicate claims in error.

When the grievor was questioned about having submitted pay claims for January 25 and 26, 2013, he stated that he was on his days off from training. The grievor's training record reveals that when previously following LE Dubois on his days off, the grievor had been called by the Company to be removed from training and added to the spareboard, thereby making himself available and entitled to claim pay.

DECISION

The Union alleges that the investigation was not fair and impartial. It asserts that the Company entered into the investigation having predetermined the outcome. Further, the Union asserted that the notice was not sufficiently particularized to cover both the duplicate claims and the claims for pay on January 25 and 26, 2013. The Union also took issue wtih the Company "continually" adding new documents and information throughout the investigation. The latter reference is to the Company obtaining and producing the Company's records reflecting the grievor's log-in history to CATS after the grievor's statement on April 18, 2013.

In asserting its position about the Company's alleged predetermined conclusion concerning the grievor's guilt, the Union relies on the Company asking the grievor about whether he was concerned, on February 6, 2013, that he had no money coming in on the next scheduled pay cheque. The grievor answered that that was not the case.

Contrary to the Union's contention, the question referenced above is not a leading one in that it neither presupposes nor suggests an answer. The Company was simply exploring the grievor's possible motivations in making a duplicate pay claim. It does not offend against the general rule that questioning remain open ended in a manner such as to reflect general impartiality and withholding of judgment. As for the Union's allegation that the notice was insufficiently particularized, my view is that by covering time claim irregularities for the period specified in the notice that was sufficiently specific to meet the requirements of Article 82 of the Collective Agreement.

Having regard to the chronology set out above, and on a careful review of the grievor's investigation statement together with the record before me, I am unable to accept that the grievor made the duplicate claims in error.

First, the grievor's explanation surrounding the making of the duplicate claims is highly suspect. There may be the rare time, which the Union asserted happens on occasion at night, that the screen in CATS goes blank. The difficulty is that the Company's record reveals that the only time the grievor logged into CATS was on the morning of February 6, 2013 when he made the duplicate claims.

Secondly, the grievor could have raised his concern about the possibly incorrect claims by raising the issue on the tickets themselves. Or, as the grievor would have been well aware, he could have submitted the duplicate claims as stand alone (AD) claims – which would have prompted a review by the pay office prior to approval. The grievor did neither of these things.

Thirdly, the grievor could not have noticed some time after he made duplicate claims that they were made in duplicate. The only place the grievor could have noticed that he had made a duplicate claim was in CATS but the grievor did not log on to CATS after making the duplicate claims on February 6, 2013 until February 25, 2013.

The only logical conclusion to be drawn from the grievor's ultimate failure to produce the phone records to corroborate that he had informed the Company of the duplicate claims prior to the Company's discovery of them is that the grievor fabricated the alleged calls to the payroll office and the conversation held with the unnamed female employee in that department.

Having regard to the above, I find that the duplicate wage claims submitted by the grievor on February 6, 2013 were not honestly made, and that the grievor misled the investigator as described above. For reasons, which the grievor best appreciates, he made a highly irregular claim, in highly irregular circumstances and was dishonest about it when confronted. I cannot really believe that the grievor thought that he was entitled to

the claims for pay when he made them a second time on February 6, 2013 in such circumstances.

As for the grievor's submission of pay claims when he was not answering the phone between January 25 and January 27, 2013, the issue is not one of collective agreement interpretation as argued by the Union. If the grievor did not know, which is highly doubtful, he should have known that when an employee in the SLE program makes claim for payment – even on the days off of the LE trainer he or she is following - it must be in consideration for making himself or herself available for a potential call. The grievor was not available for any such call.

There are no mitigating considerations before me.

For all the foregoing reasons, the grievance is dismissed.

October 29, 2014

CHRISTINE SCHIMDT
ARBITRATOR