

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4385**

Heard in Calgary, March 12, 2015

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**UNIFOR, NATIONAL COUNCIL 4000**

**DISPUTE:**

The assessment of forty-five demerits to Mr. G. Buchan for gross misconduct towards General Manager Tom Brown on August 4, 2014.

**JOINT STATEMENT OF ISSUE:**

In support, the Union alleged Mr. Buchan was venting his frustration as a result of his belief that he was not being treated fairly by being asked to provide a doctor's note to substantiate an absence on August 1, 2014 and that the act of sending the email was Mr. Buchan venting and, subsequently, an act of poor judgement. The Union contends that the assessment of discipline in regard to this matter was excessive.

The Company disagrees with all the Union's allegations. Mr. Buchan engaged in flagrantly insolent and insubordinate behavior when he wrote an insulting and contemptuous email to General Manager Tom Brown clearly documenting his deliberate defiance of Mr. Brown's managerial authority. This was not the first time Mr. Buchan inappropriately challenged the authority of a senior leader at CN.

**FOR THE UNION:**  
**(SGD.) B. Kennedy**  
**President**

There appeared on behalf of the Company:  
R. Campbell  
R. Bateman  
M. Rusnak

**FOR THE COMPANY:**  
**(SGD.) R. Campbell**  
**Labour Relations**

– Manager Labour Relations, Winnipeg  
– Director Labour Relations, Toronto  
– Manager, Crew Management Operations and Audit

There appeared on behalf of the Union:  
B. Kennedy  
B. Fitzgerald  
W. Gajda  
G. Buchan

– President, Edmonton  
– National Representative, Toronto  
– Regional Representative, Toronto  
– Grievor, Edmonton

## AWARD OF THE ARBITRATOR

This Award deals with the assessment of discipline in this case and in **CROA&DR 4386**. The incidents in both cases arise out of common facts and connected events.

The grievor is an employee of fifty-five years of age with thirty-seven years of service. He worked as a Timekeeper in the Western Operations Centre in Edmonton. Before the events leading to these grievances, the grievor had no active demerits and has had no discipline for eleven or twelve years.

On August 1, 2014 the grievor was absent from work. When he returned to work on Monday August 4, 2014, he was asked to produce a doctor's note. He took exception to this request, in part because of his understanding of the collective agreement requirements for sick notes and because he prides himself on his attendance record. In response to the request, the grievor sent an email to Tom Brown, the General Manager. After describing his concern regarding the sick note issue. The grievor punctuated his email, in part, as follows: "What part of this do you not understand?." "After the crap you pulled on me last March why would I even consider bringing in sick notes anyway", "You should be ashamed of yourselves" and ending with "Do not ever ask me for a sick note again".

There is some background relevant to this case. On March 6, 2014, some five months earlier, the grievor had written a similar email, in a similar tone, to Mr. Brown

regarding another collective agreement issue. Mr. Brown responded to that letter outlining the Company's position on the collective agreement issue, advising the grievor that if he disagreed a grievance would be the appropriate response and ending "future action of this nature will be met with consequences".

There is no doubt that the grievor's August 4<sup>th</sup> email was intemperate, ill-considered and inappropriate. He was motivated by outrage over being asked for a sick note in the context of his good attendance record and his view of the collective agreement provisions.

Following the email incident the Company determined that it would present Mr. Buchan with a Notice to Appear in connection with an investigation into that incident. This gave rise to the second incident and discipline brought under **CROA&DR 4386**.

On August 5, 2014 the grievor was met in the parking lot by Michelle Rusnak, the Manager of Operations and given the Notice to Appear for an August 7, 2014 investigation. The grievor was told he would be taken out of service. This action surprised and angered the grievor, who later in the investigation meeting described the event as being "sucker punched now for the second time". According to Ms. Rusnak, the grievor, among other things, said he was "not fucking listening to anything", that he was done and "I quit". He ended the conversation by grabbing the envelope and walking away saying, "I'm not fucking showing up for that".

In the investigation meeting into the email incident, the grievor explained his position as to why he need not bring a doctor's note and indicating that "if this crap ever happens again the Company will be hearing from my lawyer". He directed the Company to "cease and desist" their practice in relation to dealings with him. The grievor was assessed forty-five demerits for the email incident.

In the investigation meeting held into the parking lot incident, the grievor said that he did not remember saying or doing anything untoward and that he was quite rattled. Other than the profanities, he confirmed the general accuracy of Mr. Rusnak's statement. I find that Mr. Rusnak's statement is an accurate rendition of what occurred in the parking lot. The Company assessed thirty demerits for the parking lot incident and discharged the grievor for accumulation.

The Union relies on the grievor's frustration and anger over the sick leave dispute. It says that the grievor is outspoken. The Union maintains that the grievor was angry and frustrated and taken by surprise in the parking lot. He was very surprised to learn he was being held out of service. The Union contends that Mr. Rusnak should not have met with the grievor in the parking lot. The grievor's reaction was immediate and borne out of surprise and frustration. The Union further relies on the grievor's clean record and long service, and contends that both disciplines were excessive.

The Company contends that these demerits were warranted given that the email was clearly defiant of management's authority, and the grievor's conduct was not

momentary in nature. The Company relies on **CROA&DR 4304** where the assessment of forty-five demerits points was upheld for inappropriate text messages. It concedes that the content of that case contained more venomous comments. Moreover, the grievor in that case had an unenviable disciplinary record.

The grievor's email to Mr. Brown was clearly inappropriate in content. It was disrespectful. The grievor was not entitled to dictate to the Company that it could not require him to produce a sick note. However, the grievor's March 2014 email did not give rise to any discipline and so the issuance of forty-five demerits for a further email of a similar tone was excessive. The purpose of discipline was to make clear to the grievor that his actions were not acceptable. The purpose could have been achieved with less severe discipline.

As for the parking lot incident, this incident was momentary in nature. The grievor was confronted in the parking lot and taken out of service. He was angry and frustrated and very much surprised by the Company's response. It represented to him a further injustice. It is important to note that at the time of the parking lot incident the grievor did not yet know that he was to receive forty-five demerits for the email incident. That said, his responses, tone and words were not appropriate or justified.

The grievor has worked at the Company for thirty-seven years, a very substantial period of time. In these incidents he was reacting to feeling that he was significantly wronged. His actions were borne out of frustration. The statements were not made in

public, before any other employees but in private communication. In view of his long service, clean disciplinary record and the circumstances of these cases, the issuance of forty-five and then thirty demerits leading to the discharge of the grievor was excessive. Twenty-five demerit points are substituted for the two disciplines issued by the Company.

The grievor must understand that his words and conduct in both incidents were not acceptable and are clearly deserving of discipline. The grievor has to conduct himself appropriately with management and address his disputes and disagreements through the proper channels, including the grievance procedure.

In the result, the Arbitrator directs that the grievor be reinstated into his employment, with compensation for any wages and benefits lost. His record stands at twenty-five demerit points.

April 8, 2015



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MARILYN SILVERMAN  
ARBITRATOR