

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4470-A**

Heard in Calgary, June 15, 2016

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Assessment of 15 demerits to Conductor Jenison Cudney of Edmonton, Alberta for failure of CN attendance policy between August 22-24, 2015. Going into AWOL status September 6, 2015. Then booking off on LEM on September 26, 2015 and not providing documentation when requested.

**THE COMPANY'S EXPARTE STATEMENT OF ISSUE:**

On Saturday, August 22 to 24, 2015 the grievor notified the Company of his need to be placed on Family Emergency Leave. On Friday, September 4, 2015 the grievor notified the Company of his need to be placed on Family Emergency Leave. On September 5, 2015 the grievor was placed in Absent Without Authorization (AWOL) status. On Saturday, September 26, 2015 the grievor again advised the Company of his need to be placed on Family Emergency Leave. The grievor was requested to provide supporting documentation for this leave, and failed to do so.

The grievor was required to provide an employee statement with respect to the aforementioned attendance irregularities and was subsequently assessed fifteen demerits.

The Union contends that while some discipline may be warranted, the discipline assessed was excessive and should be replaced with a written reprimand or, in any case, reduced.

The Company disagrees with the Union's contentions.

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

**FOR THE COMPANY:  
(SGD.) P. Payne for C. Michelucci**

**Director Labour Relations**

There appeared on behalf of the Company:

- K. Morris – Senior Manager Labour Relations, Edmonton
- D. Brodie – Manager Labour Relations, Edmonton
- D. Crossan – Manager Labour Relations, Prince George
- D. Houle – Labour Relations Associate, Edmonton

There appeared on behalf of the Union:

- M. Church – Counsel, Caley Wray, Toronto
- R. S. Donegan – General Chairperson, Saskatoon

**AWARD OF THE ARBITRATOR**

The Grievor was hired on September 16, 2013 as a Conductor Trainee and was qualified as a Conductor on March 1, 2014. At the time of the dispute the Grievor's pensionable service with the Company was approximately one and one half (1 ½) years.

Prior to this issue, the Grievor had been assessed discipline for violation of the Operating Rules on four occasions and was disciplined as follows: written reprimand, fifteen (15) demerits points, suspension, and suspension of thirty days. He was also disciplined for attendance management concerning absences that occurred between July 27<sup>th</sup> and August 11<sup>th</sup>, 2015 and fifteen (15) demerits points were added to his discipline record on August 11<sup>th</sup>, 2015.

When an employee exhibits a pattern of failing to protect work, such as on specific days (weekends), the employee's attendance can be monitored as stated in the Company Attendance Standards.

In the present case, the Grievor requested a leave due to Family Emergency on Saturday, August 22, 2015 at 22:43 and asked for an extension up to the following Monday, August 23. On the Friday, September 4, 2015 at 12:45, the Grievor indicated that he had to be absent for Family Emergency and his leave was approved for 24 hours per Company's non written policy. He failed to book back or contact the Attendance Management Office as he was instructed and was placed AWOL. Due to Family Emergency, two and half (2<sup>1/2</sup>) hours prior to the scheduled start, the Grievor requested a third leave on Saturday the 26<sup>th</sup>, 2015 and invoked again a Family Emergency. He also failed to return to work prior to 15:28 on Sunday, September 27<sup>th</sup> and was again placed on AWOL status for approximately seven (7) hours. In addition to the verbal request to submit supporting documentation, the Grievor was also sent a CATS broadcast message on September 26<sup>th</sup>.

Based on the aforementioned absences, on September 29<sup>th</sup>, the Grievor was provided with a Notice to Appear to attend an investigation in connection with his latest absences between August 22<sup>th</sup> and September 27<sup>th</sup>.

During the investigation, on October 7, the Grievor explained that his brother had an anxiety attack and that he needed to stay with him during the weekend of August 22<sup>nd</sup>. Concerning the weekend of September 4, the Grievor reported that he had to move and undertook to provide the date of the lease by the end of the day. The Grievor failed to do so. Concerning his leave on September 26 and the demand to submit supporting documentation, the Grievor explained that he finally did not need to bring his brother to the

hospital. He picked him up at his work and took care of him. Therefore, he had no supporting documentation.

The evidence demonstrates that the Grievor did exhibit a pattern of absences on weekends, booking off on three weekends within a six weeks period. It also reveals that the Grievor did not provide the supporting documentation when requested. He failed to submit the date of the lease and he failed to provide any kind of documentation to support his leave on September 26. On that matter, the Union sustains that the Grievor could not provide documentation that did not exist. With respect, I do not share the Union's pretention. The Grievor had just been disciplined for his absences and had been formally requested to provide some supporting documentation. It would have been very easy to provide a note from his brother's employer that allegedly called the Grievor for help on that day. He could have submitted a written statement from his brother or even any proof of his brother's condition but the Grievor chose not to do so. Given the nature of the leaves and its frequency, the Employer's request for supporting documentation was legitimate and the Grievor's negligence to submit such proof shows his carelessness.

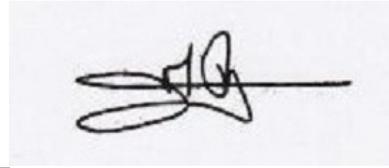
The Grievor had only one year and half of service and had just been disciplined for his absenteeism with fifteen demerits. When compared to the jurisprudence rendered in a similar case, fifteen demerits is therefore just and appropriate.<sup>1</sup>

The grievance is therefore dismissed.

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<sup>1</sup> See : **CROA&DR 4230**;

June 21, 2016

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'M. Flynn'.

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MAUREEN FLYNN

ARBITRATOR