

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

CASE NO. 4520

Heard in Montreal, December 14, 2016

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of C. Clarke.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On May 24, 2016, the grievor, Ms. Chastity Clarke, was formally notified that she was being dismissed from Company service "for violation of CROR General Rule A (xi) (x) and CROR General Rule C (i) during your tour of duty on May 13, 2016. (sic) As evidence by you being caught sleeping by your Manager." A grievance was filed.

The Union contends that: The investigation held in this case was not fair and impartial and consequently was in violation of section 15.1 of the collective agreement; the grievor was not sleeping; the grievor's dismissal was unwarranted and unfair.

The Union requests that: The grievor be reinstated into Company service immediately without loss of seniority and with full compensation for all wages, benefits and expenses lost as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:

(SGD.) G. Doherty

President

FOR THE COMPANY:

(SGD.)

There appeared on behalf of the Company:

D. Guerin – Senior Director, Labour Relations, Calgary
D. Pezzaniti – Manager Labour Relations, Calgary
D. Pardy – Road Master, Lethbridge

And on behalf of the Union:

G. Doherty – President, Ottawa
D. Brown – Counsel, Ottawa
H. Helfenbein – Vice-President, Medicine Hat

AWARD OF THE ARBITRATOR

Nature of the Case

1. On May 24, 2016, CP terminated Ms. Clarke for allegedly sleeping on the job and given her discipline history.

2. The TCRC MWED contested the evidence that Ms. Clarke had in fact been sleeping on the job. In addition, even if she had been, it argued that the penalty was too severe in the circumstances. The TCRC MWED advised at the hearing that it would not be pursuing its section 15.1 procedural argument.

3. For the following reasons, the arbitrator has decided to dismiss the grievance.

Did CP have grounds for discipline?

4. CP disciplined both Ms. Clarke and her brother for sleeping on the job in a company vehicle. A CP manager, Mr. Darin Pardy, had observed them for approximately 10 minutes. Ms. Clarke's brother later settled his grievance and was reinstated by written agreement. The particulars of that agreement are not relevant to this arbitration.

5. At the hearing, Mr. Pardy confirmed his observations that Ms. Clarke was sleeping on the job. During the presentation of their evidence, the TCRC MWED questioned Mr. Pardy about his observations. The TCRC MWED emphasized that they did not question Mr. Pardy's honesty, but they insisted that he was mistaken. Mr. Pardy

insisted just as earnestly that he knew what he saw; both Clarkes had their hoodies over their eyes and were sleeping. Ms. Clarke was not at the hearing; the TCRC MWED noted her evidence was already contained in her interview.

6. Despite conflicting evidence, the arbitrator is satisfied, on a balance of probabilities, that CP had grounds to discipline Ms. Clarke for sleeping on the job. Mr. Pardy's observations, as confirmed at the hearing, support this conclusion.

Should the penalty of dismissal be modified?

7. Ms. Clarke worked for CP from August, 2005 to May, 2016.

8. During that time frame, CP disciplined Ms. Clarke on 6 occasions. Ms. Clarke also had demerit points removed from her record due to multiple periods when she went discipline free for more than 12 months.

9. In 2014, CP terminated Ms. Clarke for the fraudulent submission of travel expense claims. The termination turned into a 6-month suspension after CP, the TCRC MWED and Ms. Clarke signed a "last chance employment contract". In October, 2015, CP suspended Ms. Clarke for 30-days for cancelling sub-foreman protection (a track protection violation).

10. Sleeping on the job does not necessarily lead to termination, but CP can impose discipline in such situations. Was CP's decision to terminate excessive as the TCRC MWED maintained?

11. The arbitrator has decided not to intervene for the following reasons. Firstly, Ms. Clarke showed no remorse for her actions. Indeed, rather than take responsibility for her actions, she instead alleged that Mr. Pardy was a liar (Company Documents (Ex-2); Tab 5; Q&A 24).

12. Secondly, this lack of candour on her part did not allow the arbitrator to conclude that she would modify her behaviour in the future. Her discipline record already contained a recent episode where her fraudulent submission of travel claims had led to her termination. The parties later substituted a six-month suspension and reinstatement pursuant to a “last chance employment contract”. An employee’s failure to take responsibility necessarily impacts any arbitrator’s assessment of whether to intervene: [CROA&DR 4334](#).

13. Thirdly, Ms. Clarke received a 30-day suspension in 2015 for a rules violation.

14. Ms. Clarke’s relatively short service and her disciplinary record do not provide a reason to intervene in CP’s decision to terminate her for sleeping on the job. The grievance is dismissed.

January 12, 2017

GRAHAM J. CLARKE
ARBITRATOR