

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

CASE NO. 4569

Heard in Montreal, July 12, 2017

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 20 demerit points to Conductor D. Couturier of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

On August 28th, 2015, the Grievor missed a call for service. The Company conducted an investigation and assessed discipline in the amount of 20 demerit points.

The Union's position is that the discipline is excessive in all of the circumstances, and should be reduced.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) R. S. Donegan

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. Galan for K. Madigan

VP Human Resources

There appeared on behalf of the Company:

- | | |
|----------------|---|
| K. Morris | – Senior Manager Labour Relations, Edmonton |
| M. Galan | – Manager Labour Relations, Edmonton |
| C. Michellucci | – Director Labour Relations, Montreal |
| M. Boyer | – Senior Manager Labour Relations, Montreal |
| S. Roch | – Manager Labour Relations, Montreal |
| L. Williams | – Manager Labour Relations, Toronto |

And on behalf of the Union:

- | | |
|-----------------|------------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| J. Thorbjornsen | – Vice General Chairman, Saskatoon |
| D. Couturier | – Grievor, Winnipeg |

AWARD OF THE ARBITRATOR

Conductor Douglas Couturier was hired by the Company on April 28, 1984. The Grievor had accumulated 31 years of service with the Company at the time of the issuance of discipline.

Prior to August 2015, Mr. Couturier had accumulated a total of 255 demerits throughout his career. One hundred-sixty (160) of these demerits were imposed for missed calls or poor work record. The Grievor also received three written reprimands for the same reasons. The latest measure of discipline was the assessment of 15 demerits in October 2014 for poor work record.

The facts in the present case are not in dispute.

On August 26, 2015, Mr. Couturier completed a tour of duty which ended in Winnipeg at 2:55pm. He booked 24 hours off to rest, making him available anytime for a call after 2:55pm on August 27, 2015.

On August 28, 2015, the Grievor failed to answer the Crew Management Center's ("CMC") calls for train Q11251-26. As such, he was registered as missing a call for work.

The Company's Attendance Management Standards, included in the Greater Winnipeg Terminal Operating Manual, mandates that employees maintain their

attendance to an acceptable standard by protecting their assignments and must not absent themselves without notification.

During the following investigation, on September 14, 2015, the Grievor admitted to missing the calls and explained:

“I was working for the summer and jumping from temporary vacancy to temporary vacancy in the Melville pool. In regards to the date in question I was of the understanding that I had jumped to 4:00 window for the Melville however at a board change I was in fact put into the Sioux. Under the assumption that I was in Melville pool, I would not have gone to work until Sunday and proceeded to run errands that evening only realizing that I had a missed call when I returned home. I would like to add that I spoke with board change and sure I heard that I had been placed on RR04 window in the Melville pool.”

Employees at the Company are advised of such board changes prior to it, often through CN's automated Interactive Voice Response system. The system attempted to notify the Grievor numerous times on August 27 and 28, 2015. A total of eight calls were made, all after the Grievor's rest period had ended. On August 28, at 9:53am, the Grievor finally called the CN CrewTalk to inquire about his standing on the working board and was informed that he had been assigned to the RR04 window in the Melville pool, as he recognized during the investigation.

The Crew dispatcher who attempted to call the Grievor later that evening, at around 8:00pm, on August 28, 2015, did so multiple times on both phone numbers registered by the Grievor in the Company's records. He later wrote in the CATS system that Mr. Couturier missed the calls.

The evidence adduced by the Employer satisfactorily demonstrates that the Grievor, for reasons known to himself only, did not answer the call for service. I find Mr. Couturier's explanations regarding his alleged mistake lackluster, as the material adduced before this Tribunal shows that he had been informed that his position had been switched to another board. The Grievor had the responsibility to make himself available to answer calls from the Company, as indicated in the Company's Attendance Management Standards. Running errands did not preclude him from doing so.

In **CROA&DR 3778**, Arbitrator Moreau upheld the assessment of 20 demerits for a missed call and stated that:

"In terms of the grievor's failure to protect her assignment by sleeping through her call on October 3, 2008, I accept the position of the Company that it was incumbent on the grievor to report to work and that her personal circumstances, including the fact that she was just away on illness leave for some 14 months, is insufficient reason to justify her absence. On that basis, there is cause for discipline."

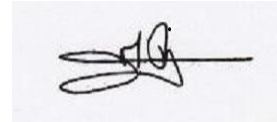
In **CROA&DR 3817**, the assessment of 15 demerits for a missed call and subsequent dismissal of the grievor for accumulation of more than 60 demerits was upheld. Arbitrator Picher stated that the company had properly applied the principles of progressive discipline and that, as such, there was no reason to allow the grievance.

In **CROA&DR 3639**, Arbitrator Picher upheld the assessment of 20 demerits and 10 demerits for two missed calls. Due to the grievor's record, 20 demerits were deemed appropriate, as she had previously been punished several times for missed calls or poor work attendance.

Given that the Grievor has been disciplined numerous times in the past for missed calls and poor work record, I find that the assessment of 20 demerits was reasonable in the circumstances. The quantum respects the principle of progressive discipline, as Mr. Couturier was assessed 15 demerits less than a year before for poor work record. Moreover, the jurisprudence of this Office holds that, in similar circumstances, and despite the Grievor's length of service with the Company, 15 or 20 demerits is a sensible assessment for such a violation.

Thus, for the aforementioned reasons, the grievance is dismissed.

July 20, 2017



**MAUREEN FLYNN
ARBITRATOR**