CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4715-A

Heard in Montreal, December 18, 2019

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The disciplinary assessment of a 5 day suspension to Conductor B. Matyas of Moose Jaw, Saskatchewan.

UNION'S EXPARTE STATEMENT OF ISSUE:

Following a formal investigation, Mr. Matyas was issued a 5 day suspension (deferred), described as "*In connection with booking off sick after accepting the K36 assignment call for duty, while employed as a Conductor in Moose Jaw, Saskatchewan on March 16, 2016. A Violation of CP's Attendance Management Policy."*

Union's Position:

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety.

The Union contends the Company has improperly applied the process of deferral in the instant matter, which therefore fails all tests required to properly establish Company policy as it pertains to assessing discipline, and is in violation of Article 70.09. It is also the Union's contention that the penalty assessed is contrary to the arbitral principles of progressive discipline.

The Union contends the Company has failed to meet the burden of proof required to sustain formal discipline related to allegations of culpable absenteeism. Additionally it is the Union's position that the Company has failed in providing the absences in question were not bona fide.

The Union contends that Mr. Matyas was wrongfully held from service in connection with this matter, contrary to Article 70.05 of the Collective Agreement.

The Union contends the discipline assessed to Mr. Matyas is unjustified, unwarranted and excessive in all of the circumstances, including mitigating factors evident in this matter. Additionally, the Union asserts the discipline assessed violated the Collective Agreement, the Canada Labour Code as well as Company Policy. Accordingly, the Union requests the discipline be removed from Mr. Matyas' employment record, and he be made whole for all associated loss with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees. Fit.

The Company disagrees and denies the Union's request.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

The Company disagrees and denies the Union's position.

The Company maintains the discipline was properly assessed in line with the Collective Agreement, Company Policy and the Canada Labour Code. Culpability was established during the fair and impartial investigation. Prior to assessing discipline, the Company duly considered all mitigating and aggravating factors.

The Company cannot agree with the Union's allegations of a violation of Articles 39.06 and 39.13 of the Consolidated Collective Agreement. Alleged violations of Article 39.13 have been previously arbitrated and a remedy adopted. This remedy has been to replace the deferred suspension with a time served suspension.

As to the Union's position on Article 39.06, it is simply unclear. The Union's position has changed between Step I and Step II grievances submitted. As such, the Company reserves the right to respond at arbitration.

The Company maintains that the discipline assessed was just, appropriate and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) D. Fulton	**(SGD.) S. Oliver**
General Chairperson	Manager, Labour Relations

There appeared on behalf of the Company:

S. Shaw	– Senior Director, Labour Relations, Calgary
D. Pezzaniti	– Assistant Director, Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
D. Fulton	– General Chairperson, Calgary
D. Edward	– Senior Vice General Chairperson, Medicine Hat
B. Wiszniak	– Local Chairperson, Moose Jaw
B. Matyas	– Grievor, Moose Jaw

AWARD OF THE ARBITRATOR

1. The facts of this matter are not in dispute.

2. Brent Matyas' (the "Grievor") while on assignment as a Road Switcher, was on a regular schedule at K-36.

3. On March 16, 2016, approximately 20 minutes prior to his shift which was to start at 6:00 AM, the Grievor called in sick. This left the Company without sufficient time to replace him on the crew.

4. At an ensuing investigation, which I find was conducted in a fair and impartial manner, the Grievor allowed (Question 13):

> *"I had no call set up in the computer. I did not have phone beside me. I woke up at 5 and I was feeling sick but I had a shower hoping that I would feel better and after I felt totally unfit for work so I had to make a call so I booked sick."*

5. Employees who work on regular shifts have the ability to request that they not get a standard two-hour call from the Crew Management Centre prior to their on duty times. This is accomplished by adjusting their personal profiles in the CMA. The Grievor did this to avoid having the 2-hour call in advance. Two hours is the minimum amount of time that the Company requires to find a substitute worker to replace an employee who is unable to report to work.

6. Following the investigation, the Company assessed a five-day (deferred) suspension (Union Exhibits; Tab 4) for the following reasons:

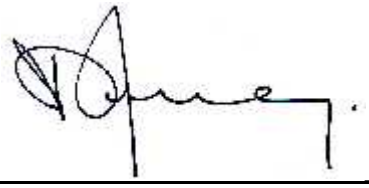
> *"In connection with booking off sick after accepting the K36 assignment call for duty, while employed as a Conductor in Moose Jaw, Saskatchewan on March 16, 2016. Violation of CP's attendance management policy."*

7. As pointed out by Arbitrator Picher in **CROA 3981**:

> *"The discipline in the instant case was not issued by reason of the grievor's absence, nor did the Company question the legitimacy of his illness. Rather, the discipline assessed is for the fact that the grievor did, contrary to long standing policy, await the moment of an actual call to work before advising the Company that he would not attend at work because of illness. That rule, which is of long standing, is plainly intended to ensure that employees exercise a degree of vigilance and responsibility in giving their employer reasonable advance notice of their inability to attend at work by reason of illness. I am satisfied that that is not an unreasonable requirement in the railway industry which must operate on a 24 hour a day, 7 day a week basis, with many trains being required to operate at unscheduled and sometimes unpredictable times." (See also CROA 4630).*

8. The Grievor has an abysmal discipline record. This is not his first discipline related to attendance. Accordingly, I can find no mitigating circumstances to interfere with the Company's assessment of discipline.

9. The grievance is dismissed.



February 28, 2020

RICHARD I. HORNUNG, Q.C.

ARBITRATOR