

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

CASE NO. 4749

Heard in Montreal with Video Conferencing, July 14, 2020

Concerning

CANPAR COURRIER

And

UNITED STEELWORKERS - LOCAL 1976

DISPUTE:

The dismissal of Mr. M. Primus, for fraud and breach of trust.

JOINT STATEMENT OF ISSUE:

1. On or around July 11, 2019, Mr. Primus provided his employer with a doctor's note stating that he would not be available for work due to stress and anxiety.
2. The worker submitted a claim to Great-West Insurance and the claim was denied on September 12, 2019.
3. Mr. Primus provided the employer with a progressive return to work note on September 13, 2019 but was never reinstated.
4. The Company held a first interview with Mr. Primus to inquire about his condition on September 18, 2019.
5. The Company held an investigation with Mr. Primus on September 20, 2019 and suspended him for investigation.
6. The employee was scheduled to meet a psychiatrist on September 25, 2019 chosen by the employer.
7. On October 2, 2019, the company sent a follow-up letter updating the employee of the progression of the investigation.
8. On October 10, 2019, Mr. Primus was dismissed from Canpar.
9. The Union filed a grievance asking for the workers reinstatement without loss of wages, benefits and seniority.
10. The employer denied the grievance.

FOR THE UNION:
(SGD.) N. Lapointe
Staff Representative

FOR THE COMPANY:
(SGD.) L. Fuaco
Vice President Operations

There appeared on behalf of the Company:

C.S. Perron – Human Resources Business Partner, Montreal

And on behalf of the Union:

N. Lapointe – Staff Representative, Montreal

G. Rankine – Business Agent, Vancouver

M. Primus – Grievor, Montreal

AWARD OF THE ARBITRATOR

1. The Company dismissed Mr. Primus for allegedly lying about his medical condition and providing incomplete descriptions of activities that were incompatible with the alleged disability. I must first decide whether the Company has proven, on the balance of probabilities, that Mr. Primus falsified his medical leave of absence. Then, I must determine whether the discharge was just and reasonable having regard to the circumstances.

2. Mr. Primus was employed with the Company since April 11, 2003. He worked in Montreal and held the position of “warehouse A sorter”. At the time of dismissal, his employee file stood at zero demerits. On July 11, 2019, he was diagnosed with depression by Dr. Bisailon. There is no information in the largely illegible notes that indicate the basis for that diagnosis. His treatment included prescribed medication along with the recommendation to take time off work to improve his health. Two medical notes were provided to the Company. They state the dates Mr. Primus will be off work without further details.

3. The insurance request forms were sent to the insurer on August 21, 2019. Mr. Primus’s insurance claim was denied on September 12, 2019. According to the

insurance company, the information provided regarding his activities does not support the finding that a medical condition would prevent him from working. The next day, Mr. Primus's physician suggested a gradual return to work commencing September 16 and leading up October 21, 2019, to resume full-time duties. The Company did not accept the return to work plan and investigated the situation.

4. The Company scheduled an independent medical examination on September 25, 2019. After examining Mr. Primus and assessing the level of activities he undertook within the past months, the psychiatrist concluded that there was no medical condition justifying a leave of absence for the period of July 11 to September 16, 2019. According to the psychiatrist, Mr. Primus was fit to work without restrictions and there was no medical condition requiring treatment.

5. On October 2, 2019, the Company relieved Mr. Primus from duties pending the results of the investigation. He was dismissed on October 10, 2019.

6. The information provided from Dr. Bisailon is minimal and insufficient to cover the basis for the diagnosis and alleged limitations. In the absence of supporting evidence to Dr. Bisailon's diagnosis, I am compelled to find that the Company has satisfied its burden of proof. It has established, on the balance of probabilities, that Mr. Primus's social activities and hobbies were incompatible with his alleged medical condition. During his "medical leave", he was involved in numerous cultural and musical events.

7. The Company's evidence includes pictures showing Mr. Primus performing as a DJ at events and parties. He also travelled to Toronto to attend a costume band event just a few weeks after being diagnosed by Dr. Bisailon. The documented activities, which include Mr. Primus' extensive social media promotion of musical performances and other published materials, do not correspond to the symptoms reported by Mr. Primus.

8. Assuming Mr. Primus is correct that some of the material published was prepared in advance of his alleged disability, the level of activities and events organized require time and preparation. Such dedication, even though it appears to have been unpaid and community-inspired, is incompatible with a disability preventing a person from working. I am satisfied with the persuasive evidence adduced by the Company that Mr. Primus did not suffer from a medical condition preventing him from working.

9. Was the discharge the appropriate sanction given the circumstances? Mr. Primus had a clean disciplinary record at the time of dismissal with seventeen years of service with the Company. Although he may not have been forthcoming about his involvement in activities during his absence, his tenure and good record mitigate the sanction. I am compelled to afford Mr. Primus one last chance to redeem himself.

10. The grievance is allowed, in part. Mr. Primus is reinstated into his employment forthwith, with no loss of seniority. The dismissal will be substituted with a suspension

from the date of the dismissal to the date of the reinstatement. There will be no retroactive compensation for wages or benefits.

11. I shall remain seized with respect to the application, interpretation, and implementation of this award.



August 7, 2020

AMAL GARZOUZI
ARBITRATOR