

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

**CASE NO. 4893**

Heard in Montreal, January 11, 2024

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The Union advanced an appeal on behalf of Locomotive Engineer L. Ryles of Cranbrook, (B.C.) regarding her file closure from Company Service.

**JOINT STATEMENT OF ISSUE:**

On February 1, 2022, the Grievor's employment file was closed after she failed to appear for three (3) formal investigations that were scheduled on December 20, 2021, December 29, 2021 and January 11, 2022.

**Union's Position:**

On August 18, 2021, Lesley Ryles was removed from her train due to being exposed to Covid-19 while working. After contacting the covid hotline she was instructed to isolate and remain off until August 24, 2021, at 0001.

Ms. Ryles seven-year-old son was being cared for by her father on the West coast of BC. The morning of August 24, 2021, her father become incapable of continuing the care for her seven-year-old son and she had to travel to pick up her son. After discussing the issue with a Crew Dispatcher, she felt the only option was to book 'unfit'. August 27, 2021, her status was changed by Local Management.

On September 14, 2021, an accommodation request was submitted via email by Legislative Representative John Dawson on behalf of Ms. Ryles. This request was denied by the Company on September 20, 2021.

On October 11, 2021, Ms. Ryles received an email from Employee Services representative N. Matildo advising her that she had been placed on "Unpaid Personal Leave".

On approximately December 18, 2021, she was contacted by her Local Chairman advising her of an investigation that was scheduled for her regarding her absence. She said she was currently on unpaid personal leave and was not able to attend.

On December 22, 2021, Ms. Ryles contacted Employee Services requesting to know her status, she was informed she was still on "Unpaid Personal Leave". On December 22, 2021, an email was forwarded to local management from Ms. Ryles requesting personal leave citing childcare issues, the Company chose not to respond to the email.

On January 12, 2021, a FAF was submitted by her Doctor to CP Health Services, in part citing that she has “long covid syndrome” and “is at risk of sudden incapacitation and impairment...” because of this is “totally unfit to perform any work...”.

On January 13, 2021, Ms. Ryles tried to contact Superintendent C. Gingras and left a voicemail and did not receive a call back.

On February 3, 2021, Ms. Ryles was advised by an email that her file had been closed with CP as of February 1, 2021.

The Union maintains the Company was aware of the situation Ms. Ryles was having as evidenced in the request for accommodation dated September 14, 2021, as it was subsequently denied stating it would be further reviewed once she was able to find childcare to accommodate her working for 8-hours.

The Union also asserts the Company was aware of the difficulty she was having in finding care for her son as it is stated in a Company memo dated December 14, 2021.

The Union asserts the Company failed to respond to Ms. Ryles request for Personal Leave on a compassionate basis on December 22, 2021, neglecting their duty to accommodate an employee or communicate with her.

The Union contends the Company has failed to provide any evidence that Ms. Ryles even received the Notice of Investigations that were sent via registered letter.

The Union disputes the Company's position that Ms. Ryles was placed on Personal Leave due to the Transport Canada Mandate requirements for vaccination. The Company's Vaccination Mandate Policy was not published until October 30, 2021, also it states in Section 4.3 that employees on leave do not have to attest to their vaccination status.

The Union seeks an order that the Company immediately reinstate Engineer Ryles, that she be accommodated until such time she is fit for duties as an Engineer. The Union further requests that she be made whole for lost wages, with interest, as well as any lost benefits and pensionable service in relation to her time withheld from service. Furthermore, the Union is seeking damages on behalf of Ms. Ryles that have resulted from the stress and mental anguish at the loss of her employment. In the alternative, the Union requests that the file closure be mitigated as the Arbitrator sees fit.

#### Company Position:

Following the Grievor's failure to appear for three scheduled investigation statements, the Company closed the Grievor's employment file as there was no attempt from the Grievor to reschedule any of the investigations, nor did she attempt to find alternative means of attending. Due to her lack of communication, the Company deemed she had abandoned her employment.

Given this, the Company can only assume that she was no longer interested in maintaining her working relationship with the Company and the Company closed her employment file.

With respect to the Grievor's accommodation request, the Company maintains the request was reviewed in a timely manner and communicated to her when the Company was unable to accommodate her, given the nature of the operations. The Company provided reasonable alternative that once she was able to secure childcare, the Company could review the possibility of having her accommodated to working 8-hour shifts.

All parties have roles and responsibilities pursuant to the accommodation process.

Employees are responsible for providing documentation to support their need for an accommodation. The Company maintains that efforts have been made to accommodate the Grievor's requests, yet was unable to do so due to the nature of the request that was made.

The Company maintains there has been no violation of its Duty to Accommodate, the collective agreement, the Canada Labour Code or otherwise.

**FOR THE UNION:**

**(SGD.) G. Lawrenson**

General Chairperson, LE-W

**FOR THE COMPANY:**

**(SGD.) F. Billings**

Assistant Director, Labour Relations

There appeared on behalf of the Company:

- |             |                                       |
|-------------|---------------------------------------|
| A. Harrison | – Manager, Labour Relations, Calgary  |
| S. Oliver   | – Manager, Labour Relations, Calgary  |
| L. McGinley | – Director, Labour Relations, Calgary |

And on behalf of the Union:

- |              |  |
|--------------|--|
| K. Stuebing  | – Counsel, Caley Wray, Toronto                     |
| G. Lawrenson | – General Chairperson, LE-W, Calgary               |
| H. Makoski   | – Vice General Chairperson, LE-W, Winnipeg         |
| B. Plante    | – Local Chairperson, <i>via video conferencing</i> |
| L. Ryles     | – Grievor, <i>via video conferencing</i>           |

**AWARD OF THE ARBITRATOR**

**Context**

1. The grievor is a Locomotive Engineer with some eighteen years of service with the Company at the time of the closure of her employment file.
  
2. She is a single mother of a young son, who has a disability which requires extensive care. The son had been in the care of her Father, but that arrangement could not continue due to health concerns of the Father.
  
3. The return of the son to the care of the grievor led to conflict between her family and work responsibilities. This conflict led to certain attempts by the Company, Union and grievor to find a workable accommodation schedule, but without success.
  
4. Ultimately, the grievor's employment file was closed due to her failing to attend three investigation meetings and the Company assuming that she had abandoned her position.

**Issues**

- A. Was the grievor properly accommodated by the Company?
- B. Was the decision of the Company to close the grievor's employment file arbitrary and unreasonable?
- C. If the answer to either of these questions is "no", what is the appropriate remedy?

**A. Was the grievor properly accommodated by the Company?**Union Position

5. The Union submits that the grievor's child care responsibilities were well known to the Company. She contacted the Company, told them of her sudden need to pick up her child from her Father, and filed an "unfit" notice as there was no other more appropriate code. This was later changed by local management to "Unpaid Personal Leave", which continued until the closure of her employment file in February, 2022.

6. She sought an accommodation for child care in September 2021, to work for five hours per day, which would permit her to care for her son after his return from school. This was turned down by the Company without any contact with the Union or the grievor to discuss options.

7. It was then suggested by local management that she apply for "Compassionate Leave", which she did in December. No reply was given by the Company to this request.

Company Position

8. The Company notes that the grievor has filed multiple accommodation requests in the past, all of which have been granted.

9. Here, the Company argues that the request to work five hours per day in a small station amounts to undue hardship. There simply is not sufficient non-LE work, and the minimum number of LE hours per day is eight (8), more than the grievor can work. The grievor had turned down the option of working from a different location.

10. The Company notes that the request for compassionate leave was never forwarded to the appropriate managers, either by the Union or local management.

### Analysis and Decision

11. There does not appear to be a dispute between the Parties that the grievor was entitled to accommodation, given her disabled son and the absence of other child care options.

12. The dispute centers around whether the request was properly considered and whether the available options amount to undue hardship.

13. The Company did consider and grant accommodation in the past, so there does not appear to be any animus on the part of the Company to either the grievor or the possibility of accommodation. It reviewed various possibilities and concluded that there was no option which could meet the grievor's restrictions (see Exhibit 8, Company submissions).

14. However, the troubling part of the accommodation review by the Company is that they did not involve either the grievor or the Union. As both these Parties have rights and responsibilities under the tripartite accommodation process as enunciated by the Supreme Court of Canada (see *Central Okanagan School District No 23 v. Renaud* (1992) 2 SCR 970), this process was clearly flawed.

15. By way of example, it does not appear clear that the proposed option of working from home was actively considered (see Exhibit 2, Union Submissions). Given the considerable changes caused by the pandemic, it might well have been the case that work existed across the country that could have been done online by the grievor. If she had been working from home, it might have been possible for her to work more than five (5) hours per day, as she might have been able to reconcile her work and child care responsibilities.

16. If the Union and grievor had been involved, these possibilities could and should have been explored. If these possibilities had been workable options, we would not be here today. If they had been explored and been found to be unworkable, then the Company could plausibly argue undue hardship.

17. With respect to the failure of the Company to respond to the request for Compassionate Leave, communication issues arise routinely, but the Company did have notice of the request and did not respond, either at the time or later. Given that the suggestion about applying for Compassionate Leave had been made by local management, it is highly likely that such a request would have been approved.

18. For the above reasons, I find that the Company has not met its obligations to properly accommodate the grievor's child care responsibilities.

**B. Was the decision of the Company to close the grievor's employment file arbitrary and unreasonable?**

Company Position

19. The Company submits that the grievor was given every opportunity to come in and explain her absence from August 24, 2021 to the time of investigation in December. She was given three separate Notices of Investigation, to which she failed to respond, attend or to seek an alternative date. She was aware of the Notices, both from Management and from her Union representative, yet chose to do nothing, relying on her "Unpaid Personal Leave" status. The Company argues that employees have a duty to remain in communication with their employer, even if they are not actively working. Given the complete failure to respond, the Company argues that their decision to close her employment file was reasonable.

Union Position

20. The Union takes the position that the Company was well aware of the grievor's family situation, both prior to and after the return home of her son in August 2021. She

had discussed the situation with her Crew Dispatcher, filed an “unfit” notice to get leave to pick up her son, and the Company had itself changed this to “Unpaid Personal Leave”.

21. The Union notes that it had filed an accommodation request in September 2021, which made clear that the grievor sought to work at a reduced rate, given her family responsibilities. The Company had suggested and the grievor did file for “Compassionate Leave”, to which the Company failed to respond.

22. The Union pleads that there is some doubt whether the grievor received the notices, as she was on personal leave.

23. The Union notes the filing of a FAF in January 2022, with later medical documentation confirming that the grievor suffered from Long Covid and was unfit to work until May 2022.

24. The Union argues that the decision to close her employment file was arbitrary and should be struck down.

#### Analysis and Decision

25. It appears abundantly clear that local management was well aware of the difficult family situation faced by the grievor, as a single mother with a disabled son, without ready access to child care. The Company had accommodated her in the past for this very reason.

26. The Company, to its credit, took steps to do so again in the Fall of 2021. It initially accepted the grievor’s “unfit” notice and later unilaterally gave her “Unpaid Personal Leave”. As discussed above, management looked at, but ultimately ruled against a request for accommodation, which would have permitted the grievor to work 5 hours per day. Local management suggested that she apply for “Compassionate Leave”.

27. The Company was undoubtedly interested in finding out whether the child care issue was going to be resolved and whether they could expect a return to work of their employee. They made substantial efforts to communicate with their employee, both through the three notices and through phone calls from her manager. The Union notes that it too had informed the grievor about the notices. I find that the grievor should have communicated directly with the employer concerning the notices (see **CROA 4611, 2497** and **3631** as to the duty of employees to remain in contact with the employer). It is possible that the Company simply lost patience when it sent its final notice on February 1, 2022 that her file would be closed:

“Of note, there has been no attempt on your behalf to reschedule these above listed investigations, nor to find alternate means of attending.

Therefore, the Company can only assume that you are no longer interested in maintaining your employment with Canadian Pacific Railway. In this regard, your employment record is being closed effective immediately.”

28. However, their “assumption” was clearly both arbitrary and erroneous. None of the three notices put the grievor on notice that her employment would be terminated if she failed to attend. This may be contrasted with the letter sent in **CROA 4276**, which said exactly that.

29. The Company, undoubtedly due to a communication error, failed to respond to the grievor’s Compassionate Leave request sent to the Company in December, at the suggestion of Management. There is every reason to believe that the request might have been approved, had it made its way to the appropriate decision makers. At the very least, it provided clear evidence that the grievor had no intention of abandoning her employment.

30. The FAF Form sent in January to the Company made clear that the grievor was not able to return to work at that time (see Union Exhibits, Tab 9). Again, the sending of



the form, quite apart from its content, is entirely incompatible with any intent to abandon employment. The content provides a valid reason for not returning to work at that time.

31. Accordingly, I find that the Company decision to close her employment file on the basis of an assumption of abandonment, is both arbitrary and erroneous, and cannot stand.

32. The grievor is therefore reinstated to her position without loss of seniority.

33. I remit the issue of proper accommodation from September 2021, in light of the grievor's child care responsibilities and health limitations and the Company's available work, to the Parties. I note that there would be an interruption of this issue during the period identified in the January 2022 FAF, where the grievor was unfit to work and eligible for whatever sick leave to which she was entitled. The issue of compensation is also remitted to the Parties, in light of proper accommodation.

34. Given this finding, it is unnecessary to address pension issues raised by the Union after the hearing and objected to by the Company.

35. While the process followed by the Company with respect to accommodation is troubling, I also find that the grievor should have made greater efforts to keep her employer informed of her health, evolving child care responsibilities and ability to perform her own or other work. Accordingly, I do not find damages to be appropriate in the circumstances.

36. I retain jurisdiction to decide these issues, if the Parties are unable to come to a settlement, together with any issues of interpretation of this Award.

February 20, 2024



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**JAMES CAMERON**  
**ARBITRATOR**