

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3303**

Heard in Calgary, Wednesday, 13 November 2002

concerning

**CANADIAN PACIFIC RAILWAY**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(UNITED TRANSPORTATION UNION)**

**DISPUTE:**

The assessment of thirty demerits to Mr. G.C. Biden of Moose Jaw, Saskatchewan.

**JOINT STATEMENT OF ISSUE:**

On November 7, 2001 Mr. Biden provided a forma statement to the Company. On November 19, 2001, Mr. Biden was assessed thirty demerits for:

"failing to fulfill your contractual obligations by making yourself unavailable for service and participating in an illegal work stoppage commencing on October 11, 2001, by booking sick in concert with other running trades employees at and around Moose Jaw, Saskatchewan, resulting in significant disruption to train services."

The Union advanced a grievance on the basis that the Company failed to meet the burden necessary to justify formal discipline. The Union seeks the removal of the thirty demerits.

The Company has declined the grievance.

**FOR THE COUNCIL:**

**(SGD.) D. H. FINNISON**  
**for: GENERAL CHAIRPERSON**

**FOR THE COMPANY:**

**(SGD.) C. M. GRAHAM**  
**FOR: GENERAL MANAGER OPERATIONS**

There appeared on behalf of the Company:

|              |                                       |
|--------------|---------------------------------------|
| M. Shannon   | - Counsel, Calgary                    |
| C. M. Graham | - Labour Relations Officer, Calgary   |
| C. Carroll   | - Director, Labour Relations, Calgary |
| J. Copping   | - Manger, Labour Relations, Calgary   |
| D. Guérin    | - Labour Relations Officer, Calgary   |
| M. Franczak  | - General Manager, Field Operations   |
| G. Johnson   | - Service Area Manager                |
| G. Denham    | - Manager Operations                  |
| R. Fosberg   | - Manager Road Operations             |
| R. Biskett   | - Road Manager                        |

And on behalf of the Council:

|                  |                                     |
|------------------|-------------------------------------|
| M. A. Church     | - Counsel, Toronto                  |
| L. O. Schillaci  | - General Chairperson, Calgary      |
| D. H. Finnson    | - Vice-General Chairperson, Calgary |
| B. L. McLafferty | - Local Chairperson, Moose Jaw      |
| G. C. Biden      | - Grievor                           |

#### **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied, on the basis of the medical evidence tendered, that the grievor, Mr. Biden, had a legitimate reason for being absent from work between October 12 and November 4, 2001. The material confirms, beyond any doubt, that the grievor has suffered from chronic back problems, and that through the period in question he attended at his physician's office, made some use of both prescription and over-the-counter medications, and returned to work only when authorized to do so by his doctor.

In the circumstances, I am satisfied that the Company was incorrect in its conclusion that Mr. Biden absented himself from work for the purposes of participating in an illegal strike. The grievance is therefore allowed and the Arbitrator directs that the thirty demerits assessed against Mr. Biden be struck from his record.

November 19, 2002

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**