

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3314**

Heard in Montreal, Thursday, 12 December 2002

concerning

CANPAR TRANSPORT LTD.

and

UNITED STEELWORKERS OF AMERICA (LOCAL 1976)

DISPUTE:

Regarding Mr. Asif Badoo's accumulation of demerits, which brought his total to 85 demerits. Further his employment has been terminated effective March 27, 2002.

JOINT STATEMENT OF ISSUE:

The Union contends that Mr. Badoo was sick and under a doctor's care from March 11, 2002. On March 18, 2002 he phoned in under the proper manner in accordance with article 11 of the collective agreement.

The Union argues that on March 7, 2002, according to the Company, Mr. Asif Badoo was 7 minutes late, which the employee cannot recall. He was then assessed ten (10) demerits.

The Union asserts that on March 11, 2002 Mr. Badoo reported for work. He was not well and reported to his supervisor and advised him that he was not feeling well so he was going home. The Union argues that on March 11, 2002 Mr. Badoo sought medical attention and was advised by his doctor that he should take the rest of the week off so he could recover. On March 12, 2002 the Union states Mr. Badoo phoned the terminal and informed Mr. Rick Baxter, Preload Supervisor, that he was still not well and would not be reporting for work.

The Union argued Mr. Badoo was not absent without authorization, and he did not fail to advise the Company as he did phone on March 12, 2002. He informed Mr. Rick Baxter that he had an appointment to attend. Mr. Baxter told him "okay". On his return to work he did provide a doctor's note.

The Union requested that Mr. Badoo be brought back to his former position without loss of seniority. The Union further requested that the time from which he was terminated be used as

a suspension, and he be compensated for the time he was held out of service from March 19 to 25, 2002.

The Company denied both the Union's requests.

The Union's position remains the same.

FOR THE UNION: FOR THE COMPANY:

(SGD.) D. BYFIELD (SGD.) P. D. MACLEOD
CHIEF STEWARD VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod - Vice-President, Operations, Mississauga

And on behalf of the Union:

D. Byfield - Chief Steward, Mississauga
R. Pagé - Staff Representative, Montreal
B. Plante - Local Chairman, Calgary

AWARD OF THE ARBITRATOR

Before the incident giving rise to the two items of discipline which are the subject of this arbitration the grievor's record stood at fifty demerits. His accumulation of demerits was substantially due to his failure to appear at work or to call to advise the employer of his absence or the reason for his absence. That infraction, referred to in the grievor's record as "no call no show", resulted in the assessment of demerits against him on five occasions in the month of October of 2001. He had further been assessed ten demerits for the same infraction on September 12, 2001. In addition his record, accumulated since his date of relatively recent hire in November of 1998, included a warning letter for lateness, a verbal warning for unauthorized absence, a further written warning for lateness and a written warning for unauthorized absence. Finally, he received another warning for lateness on January 9, 2002. By any account, the grievor had amassed a serious record of recidivism in lateness and, perhaps more seriously, the failure to appear at work and to call to explain his absence.

The record discloses that the grievor left the workplace claiming illness on March 11, 2002. On that day he attended at his doctor's office and received a medical note indicating that he would be unable to work for three days, meaning March 11, 12 and 13. On March 12 the grievor called and spoke to the Preload Supervisor advising that he was sick and wouldn't be at work that day. For reasons only he can appreciate, however, he did

not advise the supervisor that he had seen his doctor, nor did he indicate to him that his doctor advised him to stay off work an additional day, being March 13th. In fact the Company heard nothing from Mr. Badoo on the 13th. The same thing re-occurred on March 14 and 15, with the grievor being effectively absent without calling in and without medical authorization. Finally the grievor was again absent on March 18, although on that occasion it appears that he did call his supervisor to indicate that he had an appointment. While the Company's position is that he advised the supervisor that he had a medical appointment, the grievor maintains that he indicated that it was a personal appointment, in fact relating to attending to a legal problem concerning his cousin.

The second head of discipline concerns an incident of lateness. It does not appear disputed that the grievor was late by some seven minutes on March 7, 2002.

The Company held the grievor out of service pending investigation of the incidents related above between March 19 and 25, 2001. He was then assessed ten demerits for the incident of lateness on March 7 and twenty-five demerits for his absences without notice or authorization in the period between March 11 and March 18, 2002. In the result, as his record then totalled eighty-five demerits his employment was terminated effective March 27, 2002.

The Union objects to the grievor being held out of service for the period of the investigation, and seeks compensation for the days in question. The Arbitrator considers the Union's objection on this ground to be well founded. While the incidents of absenteeism may not be acceptable, they do not constitute "infractions of a serious nature" as contemplated under article 6.4 of the collective agreement, the condition precedent to holding an employee from service in the context of an investigation.

I turn to consider the merits of the grievance. The material before the Arbitrator confirms that the employer has used careful adherence to principles of progressive discipline in dealing with an obvious pattern of lateness and unauthorized absences recorded by Mr. Badoo throughout the period between June of 2001 and January of 2002. He knew, or reasonably should have known, that the need to adhere to his obligations of proper attendance and to advise his employer of any day he would be absent was an essential condition of his ongoing employability. Unfortunately, the discipline assessed against him, on some ten

separate occasions, apparently did not have the rehabilitative effect that the employer was entitled to expect.

The Arbitrator is at a loss to understand how the grievor could have communicated to his supervisor on March 12 that he was sick and would not be at work that day, knowing that he had in his possession a doctor's note authorizing his absence not only for that day, but also for the next day. The grievor said nothing to his employer, did not appear for work on March 13th, and indeed extended his absence for several more days without further notice or explanation. In the circumstances, as unfortunate as this case appears, the Arbitrator can only conclude that the grievor has failed to grasp the importance of keeping his employer advised on any absences on a daily basis, notwithstanding the Company's extensive efforts through prior progressive discipline to reform Mr. Badoo's unfortunate habits in that regard.

On what basis can the Arbitrator conclude in the case at hand that any further discipline, short of discharge, will have any rehabilitative value? To put it differently, on what basis can the Arbitrator conclude that to prolong the grievor's employment by an order of reinstatement, as requested by the Union, would not be prejudicial to the Company, which has dealt with Mr. Badoo fairly over a substantial period of time in unsuccessful efforts to deal with his repeated absenteeism without notice? If employees are to have the advantage of a system of progressive discipline, so must employers. In the case at hand, having regard to the relative short service of the grievor, and his obvious inability to demonstrate an understanding of the need to advise the Company of any absences on a daily basis, the Arbitrator has little alternative but to sustain the demerits assessed against him, both for his lateness and for his repeated "no call no show" incidents in March of 2002.

For all of the foregoing reasons the grievance must be dismissed, save that the grievor is to be compensated for the time held out of service pending investigation and discipline.

December 13, 2002

MICHEL G. PICHER
ARBITRATOR