

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN NATIONAL RAILWAY COMPANY

("Company")

and

**INTERNATIONAL BROTHERHOOD OF ELECTRIC
WORKERS (SYSTEM COUNCIL NO. 11)**

("Union")

**Amit Arora Grievances
10 Demerit Points**

Arbitrator:

Richard I. Hornung, Q.C.

For the Union

Robert M. Church	Counsel
Steve Martin	Senior General Chairman
Lee Hooper	General Chairman
Gurpal Badesha	Regional Representative
Darrel Kleebaum	Local Representative
Amit Arora	Grievor

For the Company

Barinder Kambo	Manager Labour Relations
Francois Daignault	Manager Labour Relations
Susan Blackmore	Senior Manager Labour Relations
Andrew Kich	Manager S&C
Adam Knorr	Supervisor S&C
Terrance O'Brien	Supervisor S&C

Hearing

May 23 – 24, 2019;
February 10, 2020
Calgary, Alberta

AWARD

I

1. This arbitration involves three grievances filed by Amit Arora (the "Grievor") regarding:
 - a suspension of 10 demerit points for an "*unauthorized leave of absence*";
 - a suspension of 15 demerit points for "*failing to follow the instructions of the supervisor*"; and,
 - a discharge for "*uttering a threat on March 16, 2018 to Company officers that you may cause physical harm to other employees*".
2. While each case will be dealt separately, a general statement relative to the Grievor's circumstances – applicable to all - are set out below.
3. At the commencement of the initial hearing, the Grievor was 39 years old and had 8 years of experience with the Company.
4. After completing his Master of Science Degree in India, the Grievor and his family immigrated to Canada in 2010. He was hired by the Company on July 12, 2010 and progressed from Technician Trainee to a Permanent Signals and Communication Technician Position on November 2010.
5. Over the period prior to the initial discipline described above, he had amassed a disciplinary record that included:
 - a written reprimand on October 6, 2017 for speeding;
 - a written reprimand on September 15, 2017 for failing to report for duty due to improper interpretation of the work rest policy;
 - a suspension on March 21, 2016 for non-compliance with CROR Rule 26 (Blue Flag Protection);
 - 10 demerit points on December 31, 2015 for failure to comply with CN policy while operating a motor vehicle;

- a further suspension on May 8, 2015 (vehicle accident);
- 30 demerits on June 10, 2014 (driving); and
- 10 demerits (driving) on September 17, 2013.

Appeal of 10 Demerits Regarding Unauthorized Absence

6. On March 21, 2018, the Grievor received a Notice to Appear (Company Tab 3), regarding an investigation into his alleged unauthorized leave of absence on March 5, 2018.
7. The Grievor attended at the Investigatory Interview on March 27, 2018. At which time he was provided with the statements of Mike Debruyne, the S&C Coordinator, and Adam Knorr, his immediate Supervisor.
8. Mr. Knorr states that:

Mr. Debruyne came into my office at 0715 on March 5, 2018.

He told me that Mr. Arora had just contacted him, ... 15 minutes after his scheduled shift was to start.

He told me that Mr. Arora had contacted him to inform him of a personal matter that he needed to attend to. Mr. Debruyne described to me that he asked Mr. Arora how long it was going to take and that Mr. Arora had told him he did not know, and that it could be any where from a few hours to the entire day. Mr. Debruyne told me that Mr. Arora wasn't sure how to proceed and Mr. Debruyne told him that he would talk to me and get back to him.

I told Mr. Debruyne that Mr. Arora could take the day off if he needed to. At no point did I authorize Mr. Arora to take an unpaid LOA.

...

I emailed Mr. Arora on March 8 at 1200 and requested that in the future, I be given at least 24 hours notice for non-emergency vacation requests.

There have been several instances when employees have requested a day off, and in all cases, have used vacation or been quite clear that they would like to request unpaid LOA.

March 26: Joe Petrucha, 0200, texted indicated he would need a vacation day

March 23: Ryan Deleurme 1000, called asked to leave early, used vacation

March 15: Cale Sanderson, 0630, emailed requesting vacation for minor emergency

These are only the most recent examples of this, however, all employees are treated the exact same in this regard, as the Union agreement does not allow for personal days.

9. Mr. Debruy'n's statement, addressed to Mr. Knorr, provides:

Amit was not in the office, I saw I had a missed call from him shortly after 7 on my cell phone. I called Amit back a few minutes later and he said he would be late but wasn't sure when he would be in. I asked why and he told me he was waiting to get his mom blood tests and he had no idea how long it would be or if he would have to do more and said something about insurance. He said the wait may only be only a couple hours but wasn't sure and did not know if he would have to do more with his mom. I said fine, sounds like maybe he needed a day off and that I would talk to you about getting a last minute day off as you were here. I came spoke to you told you what he said, you approved it. I called him back and told him that you had approved the day off as it sounded like he might need it.

*The main point here is that **he originally said it could be a couple hours or so but he wasn't sure, or he could just take the day off.** I talked to you about him taking a day off and gave him that option. I do not authorize days off without pay nor did he request that. I was simply trying to accommodate his last minute request for a day off that came after he did not show up for work, and came with vague information about how long he would be away from work.*

10. In his statement, provided at the investigation, the Grievor outlined the relevant facts. For ease of reference, I have included the entire relevant Q&A's as follows:

Q9. *Please describe in your own words, the circumstances leading up to your absence on March 05, 2018*

A9. *Initially I called Mr. Debruy'n and got his voice mail. Immediately after I called the shop his 3601 number and that went to voicemail. I called around 7:00 and spoke with Mr. Petrucha and informed him that I am in a waiting line for my mom's blood work and running a little late. I asked where Mike Debruy'n was and he said he might be on the other side of the tracks because the crossing was blocked by a train, I didn't hear back from Mike and I was still in the line up. I called and got a hold of Mr. Debruy'n at about 07:21. Mike said he will get back to me. I provided him the details and informed him that once I have retained a number I would have a better know how as to what time I would show up. At 07:45 I called Mr. Debruy'n again and informed him that I would be in at 09:00. Mr. Debruy'n stated that he had spoke with Mr. Knorr and advised me to take a day off.*

Q10. *When were you first made aware of the blood work requirement for your mother?*

A.10. *Her last blood work was done in India, before she immigrated to Canada. Her blood work was not normal and the Doctor stated her next blood work was due in 6 weeks. I had an annual vacation date on March 12 and wanted to take her then, but my mom wasn't feeling well the weekend before March 05, so I took her to the blood center in the morning of March 05.*

Q.11 *Was there an immediate health risk to your mother that would require this blood work being completed immediately?*

A.11 *There was no immediate risk and that's what the emergency was for. She was in the kitchen on sat evening and sat down on the floor and on Sunday afternoon she passed out on the couch. I had to put water on her face to wake her up and asked her if she was ok. After my phone call with my sister in India she instructed to take my mom for blood work again so that the medicines can be changed.*

Q.12 *Is there a reason why you were unable to contact Mr. Knorr in advance and advise him of your leave requirement prior to the morning of March 05, 2018?*

A.12 *I wasn't thinking about work at that point. My main priority was to have her checked and get her blood work done and it was not a scheduled appointment otherwise I would have contacted Mr. Knorr in advance. In the last 8 years I have never had a situation like this where I had to get some medial work done on an urgent basis. Because to get an appointment with an immigration Doctor here takes forever. Because not everyone at the walk in clinics accept visiting individuals from other countries.*

Q.13 *When did you contact Mr. Knorr to advise him of our required absence?*

A.13 *I did not. I got my instructions off Mr. Knorr via Mr. Debruyn on March 5 despite of me reporting to Mr. Debruyn that I will be in at 09:00, I was told not to come into work on March 5. When I asked why, I was told to take the day off and the phone was disconnected. I'm not sure if he was busy or other reasons.*

Q.14 *Did you attempt to contact Mr. Knorr directly?*

A14. *No for scheduling we always go to Mr. Debruyn.*

Q.15. *Are aware of CN's requirements to notifying your immediate Supervisor and request approval for a non emergent basis?*

A.15 *This was a last minute family condition had to be dealt with so I took care of it.*

...

Q.18 *Why would you not have taken your mother to emergency when she had her issue on Sunday?*

A.18 *My mom, she is aware that emergency could take up to 7 to 8 hours and said she would take her medicine and wait and see if she feels better. The other reason was that she does not tell me directly her health issues. She didn't want me to worry about her health rather worry about my work. She knew that I had a busy week and that was my only day off. When I told my mom on Monday morning that I have been told not to work, she wanted to come to my work and talk to Mr. Knorr. I told her we were going to go home. And she told me to take her home and don't worry about the blood work and we would do in on my vacation day.*

Q.19 *So was the blood work completed on your vacation day?*

A.19 *We still need a health number from Canada for her Doctor for the prescription to be changed.*

Q.20 *Am I correct in assuming the blood work has yet to be completed?*

A.20 *Yes*

Q.21 *Do you have any questions pertaining to the matter under investigation which you wish to ask for the record through the Presiding Officer?*

A.21 *Only thing, several instances where Mr. Knorr has provided in this written statement, for this case, all after March 5. Yes it does show that a request for a day off was needed but these all were to extend vacations and they do not correlate to my family situation. In the first line of Mr. Knorr's statement, he indicating Mr. Debruyn walked into his office at 07:15 at day of, where the very first contact with Mr. Debruyn was 07:21. So Mr. Debruyn did speak to Mr. Petrucha prior to me contacting him. Mr. Knorr had stated that Mr. Debruyn told him that I had called him 15 minutes after my scheduled shift was to start, which is miss leading. In a casual and polite manor in Mr. Knorr's statement, he had indicated to allow Mr. Arora to take the day off if he needed to and failing to mention that the phone was disconnected in the middle of the conversations and nowhere did he mention that I would have to take my annual vacation for this situation. I would have used my annual vacation for the 2 hours I was going to be late and file for the grievance. I do believe that I followed the proper protocol. I called Mr. Debruyn, I called the shop line, failing above contacted a CN Employee and informing him that I would be late. Under the guise of not following proper procedures as expected, this fabricated investigation has been put in place.*

11. Following the investigation, the Grievor received a Form 780 on March 29, 2018, assessing a discipline of 10 demerit points for his having taken:

... an unauthorized leave of absence on March 5, 2018 for a non-emergency matter. No attempt was made to contact his immediate Supervisor until after the start time of the date in question.

12. In its *Ex Parte*, the Union raised the issue of the Grievor's investigation not being fair and impartial. While that issue was not pressed at the hearing, that assertion is – in any event - unsupported by the evidence.

13. As stated by Arbitrator Picher in **CROA 3091**:

... As a general matter, it is implicit within the contract of employment between an individual and an employer that, absent the most extraordinary circumstances, difficulties within the personal life of the employee, or his parents and siblings, are not of themselves a justification to book of work without adequate notice. ...

14. The Grievor was, or ought to have been, well aware of the necessity for him to give advance notice if he intended to take time off for medical or any other reasons.

15. He attempted to justify his conduct by saying that the attendance to assist in getting a blood test for his mother was an “*emergency*” which manifested itself on the previous Saturday when his mother sat down on the kitchen floor. On the Sunday which followed, she passed out on the couch. After this occurred, he spoke with his sister who advised him to take his mother for blood tests so that they could check her medications.

16. In answer to the specific question of whether there was “*an immediate health risk to your mother that would require this blood work being completed immediately*”, he answered: “*there was no immediate risk and that is what the emergency was for.*”

17. No issue was taken with the Company's statement that the clinic, which he took his mother to, was open both on Saturday and Sunday. He therefore had both those days available to arrange the blood test during off hours.

18. While the Grievor attempted to explain his absence and his failure to contact his Supervisor in advance as being based on an emergency, the facts disclose the opposite. In fact, on the Monday in question, the clinic he attended refused to take a blood test from his mother on the basis that she did not have a health insurance card.
19. Not only was the blood test not taken on the Monday in question, it was not completed on the Grievor's vacation the following week; nor, was it taken by the time the investigation took place on March 27, 2018.
20. In the circumstances, it is unrealistic to suggest that obtaining a blood test for the Grievor's mother was an "emergency" as he described it. His attempt to do so represents a thinly disguised effort to justify his conduct.
21. Even leaving the "emergency" issue aside, the Grievor did not provide a credible explanation for his failure to contact Mr. Knorr, his immediate Supervisor, on either Saturday or Sunday in advance of the Monday morning shift, in order to obtain permission for the appropriate leave.
22. The Grievor's attempt to attribute his being authorized by Mr. Debruyne to take the entire day off is inconsistent with the facts as disclosed that day and the operational realities of scheduling in the S&C office. The Grievor's admission that: "... for scheduling we always go to Mr. Debruyne", suggests that he was aware (as he ought to have been since he is required in these circumstances to report to his Supervisor - which clearly was not Mr. Debruyne) that Mr. Debruyne was not in a position to authorize days off and thus needed to speak with Mr. Knorr. In that respect, I accept the statement made by Mr. Debruyne in his email of March 7, 2018 wherein he tells the Grievor:

... you asked me in the original phone call whether you should come in late or take a day off so that you could help your mother. This is your decision, I only answered your question and told you that if you want to take the day off it was

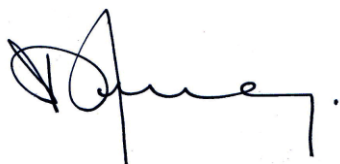
fine with both Adam and myself. I simply tried to help out and accommodate your last minute request for personal time.

23. I also accept Mr. Debruy'n's statement, in the earlier email on March 7 at 7:38 AM, wherein he confirms that he: "*cannot authorize days off without pay*".
24. Although the Grievor was given the option to take the day off in the circumstances, it was not intended to be an LOA. The subsequent email evidence is consistent with that conclusion.
25. The Union argues that the Grievor was actually "authorized" to take the day off without caveats or conditions. At the time the Company did not indicate that taking the day would result in any loss of vacation or discipline and it only returned to the matter three weeks – when the Grievor grieved the loss of the vacation day - to issue the 10 demerits notwithstanding its earlier approval for him to be absent.
26. The Grievor was disciplined for his unauthorized absence from work which stemmed from his failure to advise Mr. Knorr of his intended absence. By the time he made the request to be absent from work, his shift had already begun and he was unable to advise Mr. DeBruyn of how long he might be absent that day. After discussing it with Mr. Knorr, Mr. DeBruyn gave him the option to take the day off. It stretches practical logic for the Grievor to suggest that his having been given the option, in the circumstances, to take the remainder of the day off is tantamount to the Company "*authorizing*" him to do so without loss of time for the day or consequences for his failure to provide advance notice to his Supervisor.
27. The Grievor's conduct in the circumstances is culpable and deserving of discipline.
28. Although the demerits imposed are reasonable and I would ordinarily leave them undisturbed, I find some merit in the Union's argument regarding the Company's delay in proceeding with the grievance in a more timely manner. Based on the same, I would reduce the demerits imposed to 5.

29. The Grievance is allowed in part. The discipline imposed on the Grievor shall be reduced to 5 demerits.

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

Dated at Calgary, Alberta this 25th day of May, 2020.

A handwritten signature in black ink, appearing to read "R. Hornung", with a stylized initial "R" and a long horizontal stroke.

Richard I. Hornung, Q.C.
Arbitrator