

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

**CANADIAN PACIFIC
(The "Company")**

- and -

**TEAMSTERS CANADA RAIL CONFERENCE -
RAIL CANADA TRAFFIC CONTROLLERS
(The "Union")**

**Debbie Lachance
Ten (10) Day Deferred Suspension**

Arbitrator

Richard I. Hornung, Q.C.

For the Company:

Don McGrath - Manager Labour Relations
William McMillan - Manger Labour Relations

For the Union:

Jason Bailey - General Chairperson
Veronica Linkletter - Vice General Chairperson

Hearing Date:

April 26, 2019

Hearing Location:

Calgary, Alberta

Decision Date:

May 16, 2019

AWARD

I

On November 5, 2017, Debbie Lachance, the Grievor, was issued a letter from the Company informing her of a ten (10) Day Deferred Suspension as a result of her: *“Absenteeism rate YTD of 3.9% which is well above the office average.”*

By virtue of the Company’s Attendance Management Policy (Tab 5.b), employee attendance may be monitored and consequences may occur if: *“...an Employee’s absence rate is higher than their peers”*; or, if their work exhibits: *“...a pattern for failing to protect properly scheduled shifts such as (but not limited to specific days, holidays or times).”*

The Grievor acknowledges (Q. 21) that her absenteeism rate, at the time, was 3.9%; the documents reflect that the same rate for her peers was at an average of 0.79%.

Although the Grievor booked off sick on January 30, January 31, February 4 and February 7, 2017, she provided a doctor’s note for the same and, accordingly, no inferences were drawn and no discipline was warranted as a result of those absences.

The issue here is that on May 1, 2017, (Monday); July 23, 2017 (Monday) and October 10, 2017 (Tuesday, following Thanksgiving Holiday), the Grievor booked off as not rested. The October 10th book-off is of particular significance in that she booked off not rested after having an ILO and a GH prior to the book-off.

The Union argues that the Grievor ought not to be disciplined for non-culpable absenteeism. It suggests that the RTC absenteeism average of 0.84% at the time was far below the industry average and it is unrealistic to expect every RTC to maintain that average. Further, it argues that the Grievor had a responsibility, as an RTC, to ensure that she did not show up at work unless she was fully rested and prepared to perform her duties safely. In the circumstances, it suggests that no discipline ought to have been imposed.

In *Canada Post Corp. v CUPW (Martin)*; 1992 CarswellNat 2127, Arbitrator Burkett (quoting from Arbitrator Picher) notes as follows:

An employee's attendance record is a matter of periodic review by his or her employer. As a general matter, should the employer discern a pattern and frequency of absenteeism from which it is prepared to draw an inference of culpability, it need not await a particular instance of provable wrong-doing to do so. It may well, as appears to have occurred in the instant case, review the employee's attendance because its concern is raised by an incident of innocent absenteeism. ...

...

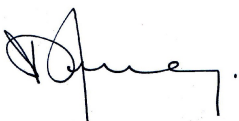
Moreover, the record, over the long term, does disclose certain recurring patterns of absenteeism, with partial or full days off being in tandem with rotation days off. While I must accept the submissions of counsel for the Union that the pattern was not fully consistent, and was less prevalent in the last year of his employment, I am nevertheless satisfied that the Corporation was justified in having concern about Mr. Larmon's attendance, both by reason of the pattern and frequency of his absences, and by virtue of the apparent lack of any evidence to disclose a chronic or recurring illness that would justify such a pattern."

The fact that the average absenteeism rate for RTC's is exceptional, does not detract from the fact that it is the "average" upon which the Company may rely in determining the existence of either a significant derivation therefrom or a recurring pattern. Having regard to the timing of her booking rest to extend weekends and her previous book offs, it was not unreasonable for the Company to conclude that the Grievor's conduct discloses an actionable recurring pattern of absenteeism taken in tandem with days off.

The Grievor's discipline record reflects a 5-day suspension for the same offence on September 20, 2016, (some eight months earlier). Taking her conduct and her less than stellar record into consideration, I am of the view that - in all of the circumstances - the 10 day deferred suspension is a reasonable exercise of the Company's progressive discipline policy for non-major offenses.

The grievance is dismissed.

Dated at the City of Calgary this 16th of May, 2019.



Richard I. Hornung, Q.C