

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")**

**Felicia Leeb
Five (5) 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 January 9, 2018, Felicia Leeb, the Grievor, was issued a letter from the Company informing her of a 5 Day Deferred Suspension:

"...as a result (of) booking off for your scheduled shifts on December 9 & 10, 2017. As a result of these book-offs, your absenteeism rate for 2017 was 2.64% which was 1.65% above the office average."

There is no dispute that the Grievor's absenteeism rate at the time was 2.64% while the same rate for her peers was 0.99%.

The issue here revolves around the Grievor's absences on the following dates:

April 5, 2017 (Wednesday); June 24, 2017 (Saturday); September 23, 2017 (Saturday); October 21, 2017 (Saturday); December 9, 2017 (Saturday); and, December 10, 2017 (Sunday).

The Company points to its Attendance Management Policy (Tab 5b) of which the Grievor acknowledges she was aware. It indicates that 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 Company concluded, after investigation, that the dates of absenteeism, particularly those of December 9 & 10, 2017, revealed a pattern of absenteeism with partial or full days off taken in tandem with rotation days off. In an effort to remedy the situation, in a progressive fashion, the Company imposed a five day suspension.

The Union takes the position that the Grievor ought not to have been disciplined in that she took the days of December 9 & 10, 2017, off because she had the flu and it would not have been responsible for her to show up at work since she would not have been able to perform her safety critical duties. In addition, the Union argues that it ought to be considered that the RTC absenteeism average of 0.99% is dramatically lower than the Canadian average of 7.4% in the private sector.

In an earlier decision (Lachance) I made the following observation:

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."

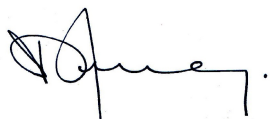
The fact that the average absenteeism rate for RTC's is exceptional, does not detract from the fact that it is the "average" upon which the Company may rely in determining the existence of either a significant derivation therefrom or a recurring pattern. Having regard to the timing of her booking rest 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.

Having regard to the above comments and the attendance record as set out earlier, I conclude that: given the absence of any medical documentation to support the Grievor's claim for sick leave absences, and taking into consideration the non-coincidental absences with vacation periods (see the Grievor's answer to Q. 41 confirming that she had four consecutive days off as a result of the December 9 & 10 absences), I conclude that there was a pattern of absenteeism from which an inference of culpability could be drawn.

The Grievor's record is not an enviable one. It includes having been previously disciplined on two occasions for similar absenteeism. Taking all of the above into consideration, I conclude that her 5 Day Deferred Suspension, in keeping with the Company's progressive discipline policy, is reasonable in all of the circumstances.

The grievance is dismissed.

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



Richard I. Hornung, Q.C.