

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4627**

Heard in Montreal, April 11, 2018

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of 20 demerits and subsequent discharge to Locomotive Engineer B. Norman of Saskatoon, SK for attendance related issues.

**JOINT STATEMENT OF ISSUE:**

On July 4, 2017 and July 16, 2017, Mr. Norman missed a call for service. The Company determined that the grievor's actions were a violation of the Attendance Management Standards and issued 20 demerits. This placed the grievor at 70 active demerits and subject to discharge for accumulation of demerits in excess of 60. The grievor's discharge is pending the outcome of arbitration, in accordance with Article 86.9 of Agreement 1.2.

The Union contends that the grievor could not have missed a call on July 4, 2017, since he had reached his monthly mileage limitation. The Union contends on July 16, 2017, that Mr. Norman was not culpable for missing a call when the Company failed to maintain the integrity of the lineup when it advanced his intended call time by six hours.

The Union further contends that the Company refused to include audio evidence during the investigation that may have had a bearing on the grievor's responsibility and as such the grievor did not receive a fair and impartial investigation. The Union contends that even if Mr. Norman is culpable, the discipline is excessive.

The Company disagrees with the Union's position.

**FOR THE UNION:**

**(SGD.) M. King** for **K. C. James**  
General Chairman

**FOR THE COMPANY:**

**(SGD.) M. E. Galan** for **K. Madigan**  
Vice President Human Resources

There appeared on behalf of the Company:

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|---------------|--|
| S. Roch       | – Manager, Labour Relations, Montreal        |
| O. Lavoie     | – Manager, Labour Relations, Montreal        |
| M. Boyer      | – Senior Manager, Labour Relations, Montreal |
| C. Michelucci | – Director Labour Relations, Montreal        |
| J. Thompson   | – General Manager, Montreal                  |

And on behalf of the Union:

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|-------------|--|
| A. Stevens  | – Counsel, Caley Wray, Toronto           |
| M. King     | – Senior Vice General Chairman, Edmonton |
| K. C. James | – General Chairman, Edmonton             |
| N. Irven    | – Local Chairman, Saskatoon              |

## **AWARD OF THE ARBITRATOR**

### **Nature of the case**

1. CN alleged that locomotive engineer Brent Norman missed two separate calls. It imposed 20 demerit points and terminated Mr. Norman for an accumulation of demerits. The TCRC argued that neither incident justified discipline. The TCRC did not pursue in its Brief or in its oral comments its allegation regarding a fair and impartial hearing.

2. For the reasons which follow, the arbitrator finds that CN had grounds to discipline Mr. Norman given the importance of protecting an assignment in the railway industry. However, given Mr. Norman's lengthy service, and his proximity to retirement, the arbitrator has substituted a 30-day suspension for the 20 demerit points.

### **Facts**

3. CN alleges that Mr. Norman missed two calls, one on July 4, 2017 and a second on July 16, 2017.

4. The evidence shows that Mr. Norman did not take those calls. Other employees had to take his place. But the TCRC highlighted certain facts for the arbitrator.

5. For the July 4, 2017 call, Mr. Norman had already reached his monthly quota of 3800 miles. This provided him with the right to book off work and not take any more

calls. The TCRC was candid, however, that Mr. Norman had the responsibility to take the steps to book off. CN does not stop calling employees for work merely because they have worked their 3800 miles.

6. For the July 16, 2017 call, the TCRC noted that CN's lineup had given Mr. Norman the impression that he would not be booked for many hours. Mr. Norman missed the call when it came almost 6 hours earlier than he had anticipated. Mr. Norman took steps to contact the employee who had been given the call but could not reach that LE. CN noted that the lineup is only a guide and does not provide employees with a guarantee of a call time. The call can come at any time.

### **Analysis and Decision**

7. CN's 24/7 operation means that running trades employees like Mr. Norman do not have set working hours like those who work from 9 to 5 in an office. This Office has noted that employees must attend work once CN has provided them with proper notice under the collective agreement. Missing an assignment is a disciplinary offence: [CROA&DR 3190](#). Employees have various entitlements which allow them to book off with proper notice. That notice then allows CN to schedule others to meet its operational needs.

8. Mr. Norman, as he is entitled under the collective agreement, has continued to work pending a decision on this termination grievance.

9. CN and the TCRC have negotiated article 86.9 pursuant to which an employee's termination, in certain situations, cannot take effect until the matter has been resolved at arbitration:

86.9 Locomotive Engineers will not be discharged or suspended beyond 30 days for attendance issues or accumulation of demerits culminating from a minor offence until the conclusion of the arbitration process contained herein. In such circumstances, the General Chair must, within 30 days of notice in writing by the Company of such intended discipline, notify the Company in writing that the Union intends to progress the matter to arbitration. If the General Chairman does not notify the Company that the General Chairman intends to progress the matter to arbitration within 30 days, then the discharge will be effective and implemented. In such circumstances, the Union is not prevented from progressing the grievance under the normal grievance procedure. For clarity on this article, see Addendum 122.

10. This Office has previously commented on article 86.9: [CROA&DR 4498](#). The parties did not dispute that article 86.9 applied to the instant case. CN later dropped its request for a clarification of article 86.9 after the TCRC had objected to a new issue being introduced at the hearing.

11. The arbitrator concludes that CN had grounds to discipline Mr. Norman for missing two calls without proper reason. However, the TCRC persuaded the arbitrator to intervene and substitute a suspension for the dismissal. There are several reasons for this.

12. First, Mr. Norman has over 3 decades of service with CN and is nearing retirement.

13. Second, Mr. Norman's discipline record demonstrates that progressive discipline under the Brown System has worked in the past (U-2; TCRC Exhibits; Tab 5). He had 5 periods during his long career when demerit points were removed due to him going discipline free for over 12 months. One cannot refer only to specific discipline over a long career without also giving credit for these 12-month discipline-free periods.

14. Third, Mr. Norman did try to remedy his failure to take the July 16, 2017 call by attempting to contact the LE who took the assignment.

15. Fourth, the arbitrator upheld 20 demerit points for Mr. Norman failing to respect speed limits in **CROA&DR 4626**, a case which was heard concurrently with the current one. The arbitrator notes that 40 of the 70 active demerit points which led to his dismissal occurred within 3 weeks of each other.

16. Given those circumstances, the arbitrator will remove the 20-demerit points CN imposed for the missed calls and substitute a 30-day suspension. CN can schedule the dates for this suspension based on current operational needs.

17. The arbitrator remains seized for any questions which may arise from this award.

April 25, 2018



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**GRAHAM J. CLARKE**  
**ARBITRATOR**