

IN THE MATTER OF AN ARBITRATION
BETWEEN

CANADIAN NATIONAL RAILWAY

(“the Company” / “the Employer”)

- AND -

CAW-CANADA, LOCAL 100

(“the Union”)

CONCERNING THE TERMINATION GRIEVANCE OF STEVE BISUTTI (“the
Grievor”)

Christopher Albertyn - Sole Arbitrator

APPEARANCES

For the Union:

Brian McDonagh, National Representative

John Gouveia, Vice-President, Local 100

Peter Kidd, Local Chair, Windsor, Local 100

Steve Bisutti, the Grievor

For the Company:

Ross Bateman, Senior Manager Labour Relations

Ron Bowden, Manager, Labour Relations

Hearing held in TORONTO on October 25, 2007.

Award issued on October 25, 2007

AWARD

1. This is a termination grievance.

2. The Grievor is a 30-year employee. At the time of the incidents leading to his termination on September 22, 2006, he had 20 demerits and two written reprimands on his disciplinary record.

3. In a short space of time, the Grievor went from this situation to having 140 demerits on his disciplinary record, well in excess of the total needed to require his termination under the Brown System applied by the parties. A total of 60 demerits results in an employee's termination.

4. The 120 demerits issued to the Grievor to put him to 140 at the time of his discharge were accumulated as follows: on July 20, 2006 he was issued 30 demerits for not following the safe jacking procedure; there was then a rapid accumulation of demerits for misconduct in the period September 13 to 15, 2006. He was given 20 demerits for coming late to work on September 12; 30 demerits for sleeping in the lunchroom during working hours on September 12; 20 demerits for breaking the valve and gauge of an acetylene and oxygen tank on September

13; and 20 demerits for being absent from work without permission on September 15, 2006.

5. The evidence establishes that at the relevant time (July to September 2006) the Grievor was suffering from depression, he was under psychiatric treatment, and he was undergoing significant and troubling changes in his personal domestic life. His misconduct over the relevant period was in substantial measure influenced by these circumstances. This serves in part to explain and to mitigate his misconduct.

6. Having considered all of the relevant circumstances – including the seriousness of the misconduct, the contribution of medical reasons for the Grievor’s behaviour, the Grievor’s long service for the Company, the Grievor’s discipline record – I find that the appropriate resolution of this grievance is the following:

- a. The grievance is upheld;
- b. The Grievor is reinstated in employment without loss of seniority or benefits;
- c. The period between the date of the Grievor’s termination and the

date of this award is deemed to be a period of disciplinary suspension for which the Grievor is not entitled to be paid wages;

- d. The discipline (20 demerits and 2 written reprimands) on the Grievor's record at the time of the incidents giving rise to this grievance is unaffected by this award;
- e. The discipline issued to the Grievor between July 20 and September 21 (the 120 merits which are the subject of this grievance) are set aside and substituted by the long period of unpaid suspension described above;
- f. The Grievor is entitled to resume work for the Company at the Windsor workplace of his employment on the following terms and conditions:
 - i. The Grievor's treating psychiatrist will first write to the Company's Chief Medical Officer or designate to advise that the Grievor is fit to resume work;
 - ii. If the Grievor is not fit yet to resume work, the Grievor will remain an employee, without entitlement to wages or benefits, until he is fit to resume his work;
 - iii. Upon resuming work, following the Company's Chief Medical Officer or designate receiving confirmation of the

Grievor's fitness to resume work, the Grievor will continue to undergo psychiatric counselling and treatment until such time as his psychiatrist confirms that further psychiatric counselling is unnecessary;

- iv. During the period the Grievor is undergoing psychiatric counselling, the Company's Chief Medical Officer or designate will be entitled to receive periodic reports, no more frequent than once every 3 months, of the Grievor's treatment and his cooperation with that treatment;
- v. The Grievor is expected to comply with all reasonable Company rules upon resuming his employment.

7. I remain seized should there be any dispute between the parties concerning the implementation of this award.

DATED at TORONTO on October 25, 2007.

A handwritten signature in blue ink, appearing to be "M. J. Kelly", is written in a cursive style.

Christopher J. Albertyn