CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 961

Heard at Montreal, Tuesday, June 8, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of the discipline assessed Locomotive Engineer M. R. Irwin of Kamloops, B.C. effective April 24, 1981.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer M. R. Irwin was called at 2220 April 23, 1981 for Train 758 to operate in through freight service, Boston Bar to Kamloops, B.C. On arrival at Kissick, a distance of 6.3 miles from Kamloops, Locomotive Engineer Irwin and train crew requested, and were granted, permission to go to eat at approximately 0400 hours April 24, 1981.

Thereafter, several attempts were made by the Dispatcher to contact Locomotive Engineer Irwin on Train 758, without success. Subsequently, the Assistant Superintendent contacted him by telephone at his residence at 0920. Locomotive Engineer Irwin then stated that because he had 11 hours on duty he was booking rest.

Following an investigation, Locomotive Engineer Irwin's record was assessed 15 demerit marks for his failure to complete his assignment resulting in delay to Train 758. The Brotherhood appealed the discipline assessed contending that:

(1) the Company was responsible for delay to Train 758; and

(2) Locomotive Engineer was given the right to book rest by the Assistant Superintendent.

The Company declined the appeal.

FOR THE EMPLOYEES:

(SGD.) A. JOHN BALL
General Chairman

FOR THE COMPANY:

(SGD.) G. E. MORGAN
Director, Labour Relations

There appeared on behalf of the Company:

J. A. Fellows - Manager, Labour Relations, CNR, Montreal
K. L. Burton - Labour Relations Assistant, CNR, Edmonton
K. P. McGinley - Assistant Superintendent, Transportation, CNR, Kamloops

And on behalf of the Brotherhood:
A. John Ball - General Chairman, BLE, Regina

AWARD OF THE ARBITRATOR

From the Joint Statement, it is clear that after approximately five hours and forty minutes on duty, the grievor left his train in order to have a meal. He never returned.

The grievor was, quite properly, granted the opportunity of having a meal, on advice to the dispatcher. This was in accordance with Article 20.2. At approximately 0400, when that opportunity was given, the grievor's train was at Kissick, some 6.3 miles from its destination of Kamloops. The train was being held at Kissick because of congestion in Kamloops Yard.

Upon leaving his train (it is not clear that the dispatcher had been given to understand that the grievor would be leaving the train in order to take his meal), the grievor then went (it is not clear how) to Bridge, whence he walked to his truck, which he reached at 0455. He then drove some 5.7 Kilometers to a restaurant. The restaurant was not open, and the grievor waited forty minutes until it opened. It seems there was another restaurant, a block away, open twenty-four hours a day.

The grievor took two hours and fifteen minutes for his meal. He then drove some 13.5 kilometers to his home, where he remained until 0925, when he was contacted by the Assistant Superintendent. In the meantime, since about 0430, the dispatcher had been trying to contact the grievor to advise that his train could be accommodated at Kamloops. The grievor, after leaving his train at 0400, made no effort to contact the dispatcher or to return to his train. When contacted by the Assistant Superintendent at 0925, he stated that he had "his 11 hours in" and was taking rest. In fact, the grievor had not booked rest in accordance with the Collective Agreement, nor can he, in any proper sense, be said to have been "on duty" for 11 hours. The grievor had in fact abandoned his train and was in flagrant dereliction of duty. He did fail to complete his assignment; he did delay his train. He was quite clearly subject to discipline.

Nothing in the material before me suggests that the Company was responsible for any significant delay to the train. It is true that the train was held at Kissick because of congestion at Kamloops. That delay would not have been long, and the grievor could certainly have brought the train to its destination within the course of a normal tour of duty had he behaved responsibly. Further, it cannot be said that the Assistant Superintendent "gave the grievor the right to book rest". The grievor had such a right in accordance with the terms of the Collective Agreement and did not exercise it in accordance with those terms. The Assistant Superintendent simply pointed out to the grievor what the right procedure was.

The grievor's behaviour was quite improper, and it is clear that he was subject to discipline. The assessment of 15 demerits was a

moderate response to the misconduct in this case.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.