

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 962

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. A. Stumph of Edmonton, Alberta effective April 18, 1981.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer M. A. Stumph was called for Train B348 to operate in straightaway through freight service from Edmonton to Wainwright on April 18, 1981. On arrival at Ardrossan, a distance of 9.1 miles from Edmonton, Diesel Unit 9412, which was coupled in the engine consist, failed account of ground relay problems. Locomotive Engineer Stumph and crew were instructed to return to Edmonton with diesel engines and secure new engine consist. Upon returning to Edmonton (Calder Diesel Shop), he booked six hours rest and went home.

Following an investigation, Locomotive Engineer Stumph's record was assessed with 15 demerit marks for failure to complete his tour of duty and causing delay to Train B348.

The Brotherhood requested that the discipline be removed and that Locomotive Engineer Stumph be paid under Paragraph 75.1, Article 75 of Agreement 1.2 contending that:

- (1) Locomotive Engineer Stumph was not the cause of the train delay;
- (2) the Company erred in claiming engine failure; and
- (3) the Company had the option to reduce tonnage and have the train proceed.

The Company declined the request.

FOR THE EMPLOYEES:

(SGD.) A. JOHN BALL  
General Chairman

FOR THE COMPANY:

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

J. Sebesta                    - Transportation Coordinator - Special Projects,  
                                 Montreal - Observer  
And on behalf of the Brotherhood:

A. John Ball                - General Chairman, BLE, Regina

#### AWARD OF THE ARBITRATOR

Article 75.1 of the Collective Agreement provides for payment to employees held off work for investigation, where no responsibility is attached to them. In the instant case, responsibility does, I find, attach to the grievor, and he is not entitled to payment.

There did develop a difficulty in the engine consist of the grievor's train, and while an "engine" may indeed consist of more than one diesel unit, the failure of one of such units may nevertheless amount to an "engine failure", in that inadequate power was then available. What occurred was within the contemplation of Article 9.6 of the Collective Agreement, which applied to the service for which the grievor was called. That Article is as follows:

"9.6 If engine fails and locomotive engineers are returned to the starting point and then continue the trip for which ordered, they will be compensated under the provisions of Article 25 for the interrupted portion of the trip."

The grievor was returned to the starting point. There was no reason whatever for the grievor to assume that he would then be off duty. There was no "automatic end-of-trip" rule, and from the material before me the grievor had been advised that he would be expected to proceed to his destination. He was, as the Joint Statement indicates, to return to Edmonton to secure a new engine consist. Instead, he returned to Edmonton and simply went home. He did not in fact complete his tour of duty, and he did cause delay to his train. This was just cause for discipline, and the imposition of fifteen demerits was not excessive.

Accordingly the grievance is dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.