CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1216

Heard at Montreal, Wednesday, March 7, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed Locomotive Engineer A. R. James, Toronto, August 2, 1982.

JOINT STATEMENT OF ISSUE:

On August 2, 1982, Mr. A. R. James was employed as Locomotive Engineer on Train 218, operating South Parry to MacMillan Yard via Brampton Intermodal Terminal. At Doncaster, Mr. James requested to eat at MacMillan Yard which request was refused by the Trainmaster. On arrival at MacMillan Yard, after making the required set off and prior to departing for Brampton Intermodal Terminal, Locomotive Engineer James insisted on eating and was instructed by the Trainmaster on two occasions to depart MacMillan Yard. Train 218 departed after a delay of 15 minutes.

An investigation was conducted and Locomotive Engineer A. R. James was assessed 15 demerit marks for improper conduct while employed as Locomotive Engineer, Train 218, at MacMillan Yard, August 2, 1982.

The Brotherhood appealed the discipline on the grounds that it was unwarranted.

The Company declined the appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) P. M. MANDZIAK	(SGD.) M. DELGRECO
General Chairman	FOR: Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

- C. Blundell - System Labour Relations Officer, CNR, Montreal
- W. Coughlin - Manager Labour Relations, CNR, Montreal
- S.L. Pound - Asst. Superintendent, MacMillan Yd. CNR, Toronto
- H. Korolik - General Yardmaster, MacMillan Yd. CNR, Toronto

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas

AWARD OF THE ARBITRATOR

The conflict in this case pertains to whether an employee is entitled to assert a perceived right under the collective agreement rather than obey a direct order of his iamediate supervisor to engage in a work related duty. In this particular case, the grievor claimed entitlement to go on a meal break pursuant to Article 87 of Agreement 1.1 at a time when his supervisor Trainmaster Wilkinson, insisted that he deliver his diesel unit to the MacMillan Yard Diesel Shop. In this particular circumstance the grievor insisted on going over the head of his immediate supervisor to consult with Superintendent Adair. Only after Locomotive Engineer James was directed by Superintendent Adair to obey his immediate supervisor was the directive followed.

As has been stated in numerous arbitral precedents the issue in these cases is not whether the employee is being deprived of a benefit under the collective agreement, namely the grievor's entitlement to a meal break, but whether he is obliged to obey the directive of his immediate supervisor and grieve any alleged prejudice as a result thereof under the collective agreement at a later date. In the absence of a legitimate excuse, the duty remains on the employee to obey his supervisor's directive. Those excuses that may be characterized as legitimate pertain to whether an employee, in following his supervisor's directive, would be engaging in unlawful or unsafe activity. In the circumstances described before me no such excuse has been advanced.

In the particular circumstances described, I have no doubt that the grievor was upset, owing to his missed meal, with the directive of his supervisor to complete his task. He was without justification, however, in appealing to his supervisor's superior with a view to countermanding an order that he was required to obey iamediately. In so conducting himself, the grievor attempted without success to demean his immediate supervisor and thereby mitigate his authority. The only appeal available to the grievor upon receipt of the supervisor's directive was recourse to the grievance procedure after he complied with the order. For that reason the grievor was patently insubordinate and thereby merited the fifteen demerit marks that were imposed.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.