CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1217

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 S. B. Rushton, Toronto, November 1, 1982.

JOINT STATEMENT OF ISSUE:

On November 1, 1982, Mr. S. B. Rushton was employed as Locomotive Engineer on Train No. 542, a road switcher operating within a 30 mile radius of MacMillan Yard. Upon arrival at MacMillan Yard Engineer Rushton left Train 542 on Track York 1 instead of yarding his train in "R" Yard.

An investigation was conducted and Locomotive Engineer S. B. Rushton was assessed 10 demerit marks for failure to properly yard Train No. 542 as instructed by General Yardmaster, MacMillan Yard, November 1, 1982.

The Brotherhood appealed the discipline on the grounds the discipline was not warranted.

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:

G. C. Blundell	- System Labour Relations Officer, CNR, Montreal
D. 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 principle in issue in this case is the very same as discussed in the previous case between the same parties in CROA case 1216. The only difference is the facts.

In this case Locomotive Engineer S. B. Rushton insisted on the assertion of his rights under Article 68.4 of the collective agreement to book rest after eleven or more hours on duty. It suffices for purposes of this case to assume, but without necessarily finding, that grievor complied with all the prerequisites for booking rest under Article 68.4.

Nonetheless, when he entered the bullpen area of the MacMillan Yard and was directed by Yardmaster Korolik to yard his train in the usual manner, the grievor had no choice but to obey that directive. It made no difference as to whether Mr. Korolik was acting to the grievor's prejudice with respect to his perceived rights to book rest under Article 68.4 of the collective agreement. His first duty was to obey Mr. Korolik's directive and grieve the propriety of that order at a later date under the grievance procedure.

Unlike CROA case 1216, the provision of the collective agreement that the grievor sought to assert may very well have pertained to a safety issue owing to his fatigue after eleven hours on duty. It is clear that the "safety" of Locomotive Engineer Rushton may very well have been argued by the trade union as a legitimate exception to "the obey now, grieve later rule". But it wasn't. On the material before me, it was demonstrated that the sole reason the grievor insisted on challenging his supervisor's direction was in order to meet a personal commitment. The safety issue was not a relevant consideration in the grievor's desire to flout his supervisor's directive to yard his train.

As a result, I have not been given any reason to alter the employer's decision to impose a penalty of ten (10) demerit marks for the grievor's insubordinate action. The grievance is accordingly denied.

DAVID H. KATES,
ARBITRATOR.