

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1608

Heard at Montreal, Wednesday, January 14, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Suspension of Locomotive Engineer H. E. Patterson, Stellarton, Nova Scotia.

JOINT STATEMENT OF ISSUE:

On May 16, 1986, H. E. Patterson was employed as Locomotive Engineer on Train 521/520 and following a statement taken on May 27, 1986 in connection with work performed on a tour of duty on May 16, 1986, and mileage claimed in connection with the tour of duty, Mr. Patterson was given a 180-day suspension for violation of SSI 2.15 and the submission of a fraudulent time claim.

The Brotherhood appealed the suspension of Mr. Patterson on the grounds that:

1. The Company violated Memorandum of Agreement, page 350, paragraph (b) of Agreement 1.1;
2. The Company failed to comply with Memorandum of Agreement, page 350, paragraph (d) of Agreement 1.1;
3. The Company failed to comply with Memorandum of Agreement, page 352, paragraph (h) of Agreement 1.1;
4. Mr. Patterson did not try to deceive the Company; and
5. Mr. Patterson did not violate Rule 2.15 of SSI on May 16, 1986.

Furthermore, the Brotherhood contends that the Company's action was partial and unfair.

The Company has declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) GILLES HALLE
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal
H. W. Hartman	- Labour Relations Officer, CNR, Moncton

B. O. Steeves - Trainmaster, CNR, Truro

And on behalf of the Brotherhood:

Gilles Halle - General Chairman, BLE, Quebec
D. G. Swales - Local Chairman, BLE, Stellarton
H. E. Patterson - Grievor

AWARD OF THE ARBITRATOR

The material establishes that on May 16, 1986 Locomotive Engineer Patterson filed a time claim which recorded his actual miles run as substantially in excess of the miles which he in fact travelled during that tour of duty. It appears that the shorter distance in fact travelled was the result of a decision taken by the Conductor, apparently without authorization by the Company. This, however, was not noted on the remarks portion of the time claim. In the Arbitrator's view this is not a circumstance in which Mr. Patterson can claim the protection of Article 16.1 of the Collective Agreement, which calls for the payment of a Locomotive Engineer according to his call, notwithstanding any change.

A critical issue is whether the grievor acted innocently, out of a misconception of his rights under the Collective Agreement, or sought deliberately to mislead the Company. Upon a careful review of the evidence the Arbitrator finds it difficult to disagree with the Company's assessment that Mr. Patterson knowingly filed an incorrect and misleading time claim. This is supported by the fact, uncontradicted by the evidence of the Union, that Mr. Patterson's report records an incorrect time for the drop-off of a tanker car at Oxford Frozen Foods, in Oxford, Nova Scotia. The time shown on the claim sheet is inconsistent with the time of the actual delivery, although it would appear to a person reading the report to be in keeping with the train's original schedule involving the longer route. As noted, Mr. Patterson, although in attendance at the hearing, gave no evidence to explain that discrepancy of almost three hours. In the circumstances the Arbitrator must agree with the Company that there was just cause for discipline for the filing of a fraudulent time claim. The evidence does not disclose, however, any violation of System Special Instruction 2.15 by the grievor.

The grievor's record reveals past instances of discipline for fraudulent time claims. In these circumstances the Arbitrator is not disposed to substitute a lesser penalty, save to order that the allegation of the violation of System Special Instruction 2.15 be expunged from the grievor's record. Subject to that directive, the grievance must be denied.

MICHEL G. PICHER
ARBITRATOR