

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1769

Heard at Montreal, Tuesday, April 12, 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The assessment of 20 demerit marks to Locomotive Engineer R. Lachance, of Joffre, Quebec, which resulted in his dismissal for accumulating 60 or more demerit marks.

JOINT STATEMENT OF ISSUE:

On November 6, 1986, Locomotive Engineer R. Lachance accepted a call to deadhead from Quebec City on Via Train No. 21. Rather than taking Train No. 21, he travelled by bus.

Following an investigation by the Company, he was assessed 20 demerit marks for:

"Failing to comply with the instructions to travel deadhead on Train No. 21, on 6 November 1986, reporting late for work and not travelling deadhead on Train No. 21 on 6 November 1986 after receiving and accepting a call to that effect."

The demerit points assessed, added to those already in his file, resulted in his dismissal.

The Brotherhood contests the discipline assessed.

The Company declined the Union's appeal.

FOR THE BROTHERHOOD:

(Sgd) G. HALL
General Chairman

FOR THE COMPANY:

(Sgd) M. DELGRECO
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

J. E. Pasteris	- Labour Relations Officer, Montreal
D. C. St. Cyr	- Labour Relations Officer, Montreal
S. Groux	- System Labour Relations Officer
D. Gignac	- Labour Relations Officer, Montreal
D. Lussier	- Co-Ordinator Special Projects Transportation, Montreal

And on behalf of the Brotherhood:

G. Hall	- General Chairman, Quebec
G. Whightman	- Local Chairman, Montreal
R. Lachance	- Grievor

AWARD OF THE ARBITRATOR

The evidence shows that on November 6, 1988, the grievor, Richard Lachance, undertook a trip by car for personal reasons before proceeding to Joffre to meet his crew and travel deadhead to Montreal, as ordered by the Company that morning. He left his home in Charny at about 06:15 to go to Sainte-Foy, intending to return to Joffre in time for the train's departure at 07:10. After he left his home, the first snowfall of the season began, resulting in an accumulation of snow such that traffic was seriously hindered, particularly on the bridge between Sainte-Foy and Joffre. The grievor was thus unable to return to Joffre in time for the departure, and so missed the VIA Rail train that took his crew to Montreal. He therefore decided to travel to Montreal by bus, but without so informing the Company.

While his crew was travelling to Montreal, the Company decided to assign it to move freight train No. 429, which had been immobilized at Saint-Hyacinthe, en route for Montreal. At that point it was discovered that the grievor was absent, and the Company was thus obliged to send another crew from Montreal to Saint-Hyacinthe, by taxi, to take charge of the train. Consequently, the grievor and his crew arrived in Montreal, as intended, except that Mr. Lachance made the trip by bus. The Company claims that the delay and the expense caused by its having to assign the other crew to train No. 429 was the fault of the grievor, and that the delay, at least, would have been avoided if Mr. Lachance had notified the employer of his situation.

In short, the grievor reported late for work, and did not inform the Company in advance of his delay nor of his decision to travel to Montreal by bus. The Arbitrator agrees that Mr. Lachance failed in his duty to keep the Company informed of the reasons for his lateness and of the fact that he was travelling to Montreal by other means. However, I cannot accept the Company's claim that Mr. Lachance's failure to report to Joffre at 07:10 resulted from a dereliction of duty toward the Company. If the facts could show that the grievor had ventured out into a snowstorm for personal reasons shortly before the time his crew was to leave, the Company's position would be more convincing. The evidence shows, however, that when Mr. Lachance left his home for Sainte-Foy, the weather was normal and he expected no difficulties. The weather reports submitted as evidence show that snow did not begin falling until after 06:30. Mr. Lachance thus found himself in an unexpected traffic jam and consequently could not report to work at the time set. For these reasons, the Arbitrator cannot conclude that Mr. Lachance was responsible for his reporting late for work on the morning of November 6, 1988.

On the other hand, I see no reason why he could not have informed the Company of his delay, by telephone, before boarding the bus, even if it would have further delayed his departure. An employee's first duty, whether he or she is late or absent, is always to keep the

employer informed of the situation. This is particularly true in the case of a locomotive engineer, whose presence is essential for a train to be moved. In the event, Mr. Lachance clearly failed in that duty, and so merited disciplinary action.

The Arbitrator considers that the penalty of twenty demerit marks is excessive in this case, given Mr. Lachance's nineteen years of service and the fact that his reporting late for work resulted from circumstances beyond his control. Nevertheless, he deserves some disciplinary penalty for not having notified the Company of his lateness. Even though his disciplinary record was substantial, I cannot conclude that he deserved to be dismissed. The Arbitrator therefore orders that the grievor be reinstated in his position, with no loss of seniority and no demerit marks assessed, and be reimbursed half of the wages and benefits lost. I remain seized of this matter in the event of any dispute between the parties respecting the amount owed the grievor or the interpretation or implementation of this award.

April 15, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR