CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1840

Heard at Montreal, Tuesday, 8 November 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed to Locomotive Engineer B.E. Wood, for alleged violation of Item 1.5 of C.N. Form 696, Item 6.3(A) of C.N. Form 697, Regional Notice 042/86 and Local Notice 045/86 and 80/86.

JOINT STATEMENT OF ISSUE:

On March 11, 1987, Engineer Wood was working on assignment #9000 in the Rockingham Yard. At approximately 14h50, R.T.C. Officer Wayne Snyder made a survey on engine 8519 and reported that the unit was left unsecured. Following a formal investigation, 30 demerit marks were assessed to Locomotive Engineer Wood.

The Brotherhood contends that the actions taken by the Company against Locomotive Engineer B.E. Wood were not taken with the goal of educating but rather with the intention of harassing and intimidating. Furthermore, the Brotherhood contends that the purpose of the discipline policy is for education and not for repression.

The Company rejected the appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(Sgd) G. HALL	(Sgd) M. DELGRECO
General Chairman	for: Assistant Vice President Labour Relation

There appeared on behalf of the Company:

J. B. Bart	- Manager, Labour Relations, Montreal
R. R. Paquette	- Labour Relations Officer, Montreal
P. D. Morrissey	- Labour Relations Officer, Montreal
D. Lussier	- Co-Ordinator Transportation, Montreal
P. E. McCarron	- Co-Ordinator Terminal Productivity, Montreal

And on behalf of the Brotherhood:

G. Hall	- General Chairman, Quebec
B. E. Wood	- Grievor

AWARD OF THE ARBITRATOR

The material establishes that Locomotive Engineer Wood did leave the cab of his locomotive unlocked while he proceeded to the office in the Rockingham Yard. It is common ground that he was then proceeding to meet with two R.T.C. officers to discuss safety concerns which he had in relation to the locomotives being used at that location. While the grievor expected to meet the officers in question in the parking lot adjacent to where he had left his locomotive idling, he was in fact instructed to wait in the office while Master Mechanic J. E. Barter and Rail Transport Committee Officer Snyder inspected a number of locomotives, including his own. When Mr. Barter and Mr. Snyder returned they notified the grievor that his locomotive was left idling with the door unlocked and the reverser lever, which controls the forward and reverse movement of the locomotive, left inside the cab. In the circumstances the Company took the position that the grievor had left his locomotive unsecured, contrary to regulations, in consequence of which he was assessed thirty demerits.

The issue is whether the locomotive was in fact unsecured in circumstances that would justify such a measure of discipline. It does not appear to be suggested by the Company that to be secured a locomotive must necessarily have someone on board or standing immediately next to it while it is idling. The facts, and indeed the Company's own rules, seem to accept that in and around maintenance shops it is not uncommon for locomotives to be left unlocked while idling without the reverser lever necessarily being removed from the cab.

The Brotherhood submits that in the instant case, when the grievor was present in the Rockingham office, approximately one hundred and fifty feet away and in clear view of his locomotive, it cannot be said that it was unattended, in consequence of which the need to secure it in the manner contended by the Company did not arise. The Brotherhood further argues that the locomotive was also visible to the operator of the station at Rockingham, so that the situation was not substantially different from what might obtain in or around a maintenance shop.

In the Arbitrator's view that argument has some validity in the instant case. It is clear that Mr. Wood did intend to return to his locomotive to inspect it with two R.T.C. officers, and that he was never at any great distance from it while it was idling. On the other hand, however, there appears in the grievor's own evidence to be some recognition that he nevertheless had an obligation to lock the door of his unit when he did leave it. This is evident in his own reply to the Company officers when they asked him why his unit was not locked. He answered that he had tried for a period of some five minutes to lock the cab, but had been unsuccessful in doing so. On the whole, I am satisfied that the grievor did advert to the need to secure his locomotive, whether or not it could be considered to be fully "unattended" for the purposes of its being secured. On the other hand, the Arbitrator has some difficulty with the assertion of the Company with respect to the degree to which the unit was in fact unattended.

The discipline imposed against the grievor was based, in part, on the contents of Item 6.9 of Regional Notice No. 042/86 which is headed

"Protection of Locomotive Against Unauthorized Movement When Left Unattended". It is that provision that requires that the reverser lever be removed when a door lock will not function, and that it should be left with a designated employee or in some other place designated by supervision. In the instant case the question of whether the locomotive was left unattended for the purposes of the Company's regulation is a matter of judgement. Given the location of the unit, and in particular its proximity to the grievor and the office at Rockingham, only one hundred and fifty feet away, the locomotive unit cannot be said to have been as unattended as it might have been had it been left in some remote location of a yard where it could not easily be observed. On the other hand, the grievor's own acknowledgment that he attempted to lock the door of the cab upon leaving the locomotive confirms that it was not inappropriate to take some steps to secure it in the circumstances.

On the whole of the evidence I am satisfied that the evidence discloses an error of judgement on the part of the grievor, but not an error that would justify the imposition of thirty demerits. For these reasons, therefore, the Arbitrator orders the substitution of ten demerits for the thirty demerits assessed, the lesser penalty to be effective on the date that the initial discipline against Locomotive Engineer Wood was assessed. I retain jurisdiction in the event of any dispute between the parties respecting the execution of this award.

November 10, 1988 (Sgd.) MICHEL G. PICHER
ARBITRATOR