CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1841

Heard at Montreal, Tuesday, 8 November 1988

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Second Engineer I. R. Fummerton, Schreiber, Ontario for numerous violations as a result of operation of VIA Trains between Schreiber and White River on March 4 and 5, 1986.

JOINT STATEMENT OF ISSUE:

On March 4, 1986, Second Engineer Fummerton was operating as such on Via No. 2 from Schreiber, Ontario to White River, Ontario. During this tour of duty he left the locomotive to sit in the Day Coach. He then fell asleep, and did not detrain at White River as scheduled. He subsequently missed his return tour of duty on Via #1 White River to Schreiber without advising the proper authorities when he had the opportunity.

On April 21, he was dismissed for leaving assigned duties as Second Engineer while enroute on Train 2/2 ex Schreiber March 4, 1986 without advising the proper authority, not arranging with the proper authority for relief, sleeping while on duty, failure to protect assigned tour of duty on Via Train 1/4 ex White River, March 5, 1986, failing to ensure proper wage claims were submitted for tours of duty on Train 2/2 ex Schreiber on March 4 and Train 1/4 ex White River on March 5, 1986, violation of U.C.O.R. General Notice paragraphs 3 and 4, U.C.O.R. General Rule E, and Article 28 of agreement between B of LE and Canadian Pacific.

The Brotherhood has appealed the dismissal on the grounds that it was too severe a penalty.

The Company contends that dismissal was the appropriate penalty in the circumstances and has declined the Union's appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(Sgd) G. N. WYNNE General Chairman	(Sgd) E. S. CAVANAUGH General Manager Operation & Maintenance, I.F.S.

There appeared on behalf of the Company:

G. W. McBurney - Labour Relations, Toronto
F. O. Peters - Labour Relations Officer, Montreal
B. P. Scott - Labour Relations Officer, Montreal
P. E. O'Donohue - Director, Accident Prevention, Toronto

And on behalf of the Brotherhood:

G. N. Wynne - General Chairman, Smith Falls
R. S. McKenna - Local Chairman, Schreiber

AWARD OF THE ARBITRATOR

The material establishes that Second Engineer Fummerton abandoned his post as second engineer in the cab of the locomotive of Via Train No. 2 on March 4, 1986, and proceeded to the day coach where he fell asleep. It is submitted on his behalf that he felt ill and that sleep was prompted by the fact that he took two Tylenol tablets. The Brotherhood's representative also notes that the first engineer was not left alone in the cab, as a trainee engineer was present with him after the grievor's departure.

In the Arbitrator's view it is difficult to place an innocent gloss upon the grievor's actions in light of all of the evidence, or to find any circumstances that would mitigate his conduct. Firstly, assuming, without necessarily accepting, that the grievor was ill, he made no attempt to communicate his condition to the Company's dispatcher or to the conductor responsible for the movement of his train. That action would have been appropriate, and indeed essential to the Company taking steps to replace him at the first possible opportunity. Secondly, it appears beyond dispute that after Mr. Fummerton's sleeping caused him to miss his turnaround destination, and the return trip to Schreiber, his first engineer submitted a time claim in his name for the entire trip, thus covering up his absence from duty. When the grievor subsequently became aware of this subterfuge he made no attempt to correct it.

The need of a locomotive engineer to remain awake and alert at all times while on duty scarcely needs elaboration. Remarkably, however, in the grievor's case the record discloses a prior incident in which the grievor was discharged for falling asleep at the controls of his locomotive. On July 21, 1984, at Mackenzie on the Nipigon Subdivision both the grievor and the head end trainman in the cab of Locomotive 5739 on Train Extra 5739 West fell asleep, passing two signals and finally running through and damaging the dual control switch of the west end of Mackenzie. This resulted in the grievor's discharge on July 30, 1984. Some eight months later, at the request of the Brotherhood, the Company decided to give the grievor a second chance, and he was reinstated to active service on the understanding that he was cognizant of the severity of his error and would refrain from similar conduct in the future.

As the material discloses, it is obvious that Mr. Fummerton failed to

live up to that undertaking. The Arbitrator is compelled to conclude that on March 4, 1986, while assigned as one of two engineers in charge of a Via passenger train, Mr. Fummerton left his post without authorization, slept while on duty, failed to notify any Company officer or his conductor of his condition or whereabouts, missed his turnaround point and subsequently acquiesced in the submission of a fraudulent time claim deliberately calculated to conceal all of these events from the attention of the Company. The grievor's actions raise obvious questions about his appreciation of the need for safety and vigilance in the operation of trains as well as the vital need for integrity and honesty in his relationship with his employer. In these circumstances, notwithstanding the grievor's prior service of some eleven years and particularly in light of his prior record, I am satisfied that the grievance is patently devoid of merit, and that discharge was justified, and indeed appropriate, in the circumstances.

For these reasons the grievance must be dismissed.

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