CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2303
Heard at Montreal, Tuesday, 8 December 1992
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
DISPUTE:
Appeal of discipline assessed Locomotive Engineer B.M. Pethick, London.
JOINT STATEMENT OF ISSUE:
On January 9, 1991, Locomotive Engineer Pethick was employed on Train 511 (Extra 4112 West) from London to Sarnia on the Strathroy Subdivision. The Company alleges that at Mileage 25.89 Extra 4112 West entered the work limits of Track Foreman Bloomfield in contravention of OCS Clearance No. 397.
Following an investigation of the matter, Locomotive Engineer Pethick was assessed a 120-day suspension for violation of Rule 311 paragraph (b) of the Canadian Rail Operating Rules.
The Brotherhood requests the removal of the discipline assessed as well as compensation for all time held out of service on the grounds that: (1) the Company has not substantiated a violation of the rules cited; (2) during the formal employee investigation Company evidence was withheld and; (3) the Company ruled pertinent questions irrelevant.
The Company declined the Brotherhood's appeal.
FOR THE BROTHERHOOD:
FOR THE COMPANY:
(SGD.) C. HAMILTON
(SGD.) A. E. HEFT
GENERAL CHAIRMAN
for: VICE-PRESIDENT, GREAT LAKES REGION
There appeared on behalf of the Company:
A. E. Heft
Manager, Labour Relations, Toronto
J. Vaasjo
Labour Relations Officer, Toronto
D. Brodie
Labour Relations Officer, Montreal
J. J. Campbell
Assistant Superintendant, Toronto
D. A. Bloomfield
Assistant Track Supervisor, Toronto
And on behalf of the Brotherhood:
C. Hamilton
General Chairman, Kingston
B. Lennox
Local Chairman, UTU [CN Lines Central], Niagara Falls
B. Pethick
Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is not satisfied, on the basis of the material presented, that the Company has established, on the balance of probabilities, that Locomotive Engineer Pethick entered the work limits of Track Foreman Bloomfield on January 9, 1991, as alleged. The material presented with respect to the evidence of the times and location of Track Foreman Bloomfield raise serious questions as to his whereabouts, and the precise location of Train 511 at the point in time when the radio contact was made between Locomotive Engineer Pethick and Mr. Bloomfield. Significantly, during that exchange Mr. Bloomfield gave no indication to the grievor that he was already within his work limits as the clearance was obtained. In the result, Mr. Pethick was effectively deprived of the ability to take note of his location at the time. He is, to that extent, less able to deal with the allegation, first made only some days later by Mr. Bloomfield. In light of Mr. Bloomfield's apparent failure to direct the grievor to stop his train, or to give him any indication that he had violated O.C.S. Clearance No. 397, the Arbitrator is left in substantial doubt as to the merits of the Company's claim.

The infraction for which Mr. Pethick lost four months of employment, which represents a substantial monetary penalty, is plainly serious. It should, accordingly, be established on the basis of clear and compelling evidence. The evidence adduced in the case before the Arbitrator falls short of that standard, and does not, on the balance of probabilities, establish that there was a violation of the OCS clearance by the grievor at the time and place alleged.

For the foregoing reason the grievance is allowed. The suspension shall be removed from the grievor's record, with full compensation for all wages and benefits lost. In light of the Arbitrator's conclusion on the merits of the grievance it is unnecessary to deal with the issue of the regularity of the Company's investigation.

December 11, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR