

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2351

Heard at Montreal, Tuesday, 13 April 1993

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer T.W. Lode, Cranbrook, B.C.

JOINT STATEMENT OF ISSUE:

Following an investigation held on January 6, 1992, in connection with his failing to be available for duty at Golden, B.C., December 25, 1991, and his subsequent submission of wage claims, the Company dismissed Locomotive Engineer Lode for knowingly submitting a fraudulent wage claim in respect of the last tour of duty worked at Cranbrook, B.C., prior to the General Holiday, December 25, 1991. The Brotherhood contends that the discipline assessed was too severe for the above violation and Locomotive Engineer Lode should be reinstated.

The Company denied the Brotherhood's contention and declined this request.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) T. G. HUCKER

(SGD.) C. E. MINTO

GENERAL CHAIRMAN

GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

R. E. Wilson

Labour Relations Officer, Vancouver

M. E. Keiran

Manager, Labour Relations, Vancouver

R. N. Hunt

Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker

General Chairman, Calgary

D. C. Curtis

Vice-General Chairman, Calgary

G. Halle

Vice-President, Ottawa

T. Lode

Grievor

AWARD OF THE ARBITRATOR

In the Arbitrator's view this is an appropriate case for a substitution of penalty. In many circumstances the knowing submission of a fraudulent wage claim will be appropriate grounds for the most serious degree of discipline. On occasion, however, having regard to the specific circumstances, penalties short of discharge have been found by employers in the railway industry to be appropriate (see, e.g., CROA 2348, where a locomotive engineer's record reveals that he was twice suspended for the falsification of time claims, but not discharged).

The grievor's record reveals no prior incident of this kind, and it is common ground that he has expressed sincere regret for what he did. His submission of an incorrect time claim for the Christmas and Boxing Day holiday of 1991 must, on balance, be seen as an uncharacteristic and isolated incident arising in the context of an otherwise good work record. At the time of discharge he was discipline free, and had registered discipline free service in four separate years between April 15, 1986 and December 30, 1990. It is also noteworthy that the Company did not deem it necessary to remove Mr. Lode from service pending the investigation of his claim. In the circumstances of this case the Arbitrator is satisfied that the bond of trust necessary to the employment relationship of Locomotive Engineer Lode has not been broken, and that he can be restored to trustworthy service.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation.

April 16, 1993

MICHEL G. PICHER

ARBITRATOR