

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2388

Heard at Montreal, Wednesday, 15 September 1993

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Dismissal of Locomotive Engineer R. G. Calver, Thunder Bay, Ontario.

BROTHERHOOD'S STATEMENT OF ISSUE:

Subsequent to an investigation held on December 14, 1992, in connection with run through switch L1RL in "L" Yard, the inter-city

area of Thunder Bay Terminal, Thunder Bay December 10, 1992, Locomotive Engineer Calver was dismissed for:

failing to ensure that the switches connected with your movement

were properly lined, resulting in a run through switch, for

failing to properly protect the defective switch and for willfully conspiring to conceal the unsafe track condition,

thereby knowingly causing a condition potentially hazardous to

the public, other railways, and fellow employees; a violation of

CROR General Notice, CROR General Rule A(ic), 1010(a), 104(d),

(j), (k), 106(d), for CS44 General Operating Instructions,

Section 7, Items 1.1 and 1.2, at Thunder Bay, Ontario, December

10, 1992.

The Brotherhood contends that Locomotive Engineer Calver's error in judgment was a one-time aberration of an otherwise long service and conscientious employee.

The Brotherhood further contends that, based on the investigation and the extreme personal stress and anxiety, the grievor's work and service record, that the dismissal of Locomotive Engineer Calver was not an appropriate disciplinary response.

The Company contends that Locomotive Engineer Calver's actions on December 10, 1992, were nothing short of reckless and cavalier, with a blatant and unmitigated disregard for the rules, leading to a serious compromising of the safety of his fellow employees and damage to Company equipment.

The Company declined the Brotherhood's request for reinstatement.

FOR THE BROTHERHOOD:
(SGD.) T. G. HUCKER
GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. E. Keiran	- Labour Relations Officer,
Vancouver	
B. P. Scott	- Labour Relations Officer,
Montreal	
M. G. DeGirolamo	- Senior Manager, Industrial
Relations,	
Montreal	
D. de Pelham	- Assistant Chief of
Transportation,	
HHC, Thunder Bay	

And on behalf of the Brotherhood:

D. C. Curtis	- General Chairman, Calgary
T. G. Hucker	- National Vice-President, Ottawa
R. S. McKenna	- General Chairman, CP Lines
East,	
Ottawa	
J. Fraser	- Local Chairman, Thunder Bay
R. G. Calver	- Grievor

AWARD OF THE ARBITRATOR

Upon a careful review of the materials filed, including medical evidence in relation to the personal stress being suffered by the grievor at the time he violated the rules cited in the Statement of Issue, the Arbitrator is persuaded that a measure short of discharge is appropriate. By the same token, however, the Company is entitled to assurances that Mr. Calver will not again knowingly create a situation of danger or seek to conceal it in the manner reflected in the incident giving rise to his discharge.

I am satisfied that two conditions should attach to any reinstatement order in the case at hand. Firstly, the grievor should return to employment in a position other than as a locomotive

engineer. Any subsequent promotion of Mr. Calver back to that rank should be a matter in the discretion of the Company. Secondly, Mr.

Calver's reinstatement is conditioned upon the Company receiving a written opinion by a suitable medical specialist, to be chosen

jointly by the parties, and failing their agreement to be named by

the Arbitrator, confirming that his mental and emotional condition

are suitable for his return to employment in a safety sensitive

position. This matter may be spoken to further should the parties

have any disagreement with respect to the implementation of the

Arbitrator's award.

September 17, 1993

ARBITRATOR

(sgd.) MICHEL G. PICHER