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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2596

Heard in Montreal, Wednesday, 15 March 1995

concerning

Canadian Pacific Limited

and

Canadian Council of Railway Operating Unions (Brotherhood of Locomotive Engineers)

DISPUTE:

The Company's refusal of a Conductor Only Separation Allowance for Locomotive Engineer J.M. Caldwell, Thunder Bay, Ontario.

JOINT STATEMENT OF ISSUE:

On April 15, 1993, Locomotive Engineer J.M. Caldwell applied in writing for the Conductor Only Separation Allowance in accordance with the Conductor Only Agreement.

On April 19, 1993, the Company declined the application pending the outcome of criminal charges against Locomotive Engineer Caldwell.

The Brotherhood requests that Locomotive Engineer Caldwell be afforded the benefits of the Conductor Only Agreement of \$70,000.00 with accrued interest.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) D. C. Curtis (SGD.) M. E. Keiran

General Chairman for: General Manager, Operations & Maintenance

There appeared on behalf of the Company:

L. Guenther - Labour Relations Officer, Vancouver

L. G. Winslow - Manager, Labour Relations, Montreal

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And on behalf of the Brotherhood:

D. C. Curtis- General Chairman, Calgary

T. G. Hucker- National Vice-President, Ottawa

L. H. Olson - President, UTU, Ottawa

R. S. McKenna - General Chairman, Ottawa

Wm. Foster - Vice-General Chairman, London

J. Fraser - Local Chairman, Thunder Bay

J. Flegel - Senior Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that on April 15, 1993 Locomotive Engineer Caldwell did apply for a separation allowance in accordance with the Conductor Only Agreement. His request was not refused. However, the Company decided to delay consideration of his request pending the outcome of criminal charges of attempted murder then pending against Locomotive Engineer Caldwell, which eventually lead to his conviction and incarceration on a reduced charge.

The material before the Arbitrator establishes, beyond controversy, that subsequent to April 15, 1993 Mr. Caldwell changed his mind about retiring. The evidence before the Arbitrator confirms that on June 1, 1993, during the course of a disciplinary investigation being conducted by the Company, in answer to a question with respect to his previous request to take severance, Mr. Caldwell stated: "At the time I wished to sever I requested to do so. Since that time I have changed my mind. I

wish to remain an employee of CP Rail."

In the Arbitrator's view the above comment must fairly be construed as a revocation of the grievor's prior request of April 15, 1993 for separation under the Conductor Only Agreement . The record thereafter is devoid of any indication of Mr. Caldwell having made a renewed application or request at any time prior to his termination. On that basis the Arbitrator is satisfied that there is no valid claim which can now be made on behalf of Mr. Caldwell for participation in the separation program offered under the Conductor Only Agreement. Having withdrawn his request, without any qualifications, on June 1, 1993, he cannot now revive it by reason of his subsequent discharge.

For the foregoing reasons the grievance must be dismissed.

17 March 1995

MICHEL G. PICHER
ARBITRATOR