

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2730

Heard in Calgary, Tuesday, 14 May 1996

concerning

**CANADIAN PACIFIC LIMITED**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

### **DISPUTE:**

Dismissal of Locomotive Engineer K.J. Shannon, Winnipeg, MB, October 2, 1995.

### **JOINT STATEMENT OF ISSUE:**

On October 2, 1995, Locomotive Engineer Shannon's record was debited with 20 demerits for failing to report for duty when required for his regular yard assignment September 10, 1995, and for failing to notify the Company of his unavailability resulting in having to call another employee.

As the grievor's record then stood at 50 demerits, he was subsequently dismissed for accumulation of demerits in accordance with the Brown System of Discipline.

The Council requested that Engineer Shannon be returned to Company service with no loss of seniority.

The Company has declined the Council's request for reinstatement.

### **FOR THE COUNCIL:**

**(SGD.) D. C. CURTIS**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) M. E. KEIRAN**  
**FOR: DISTRICT GENERAL MANAGER, MANITOBA DISTRICT**

There appeared on behalf of the Company:

M. E. Keiran	– Manager, Labour Relations, Vancouver
R. E. Wilson	– Manager, Labour Relations, Calgary
L. J. Guenther	– Labour Relations Officer, Calgary
S. Seeney	– Labour Relations Officer, Calgary
J. Copping	– Labour Relations Research Officer, Calgary
D. S. Winiski	– Manager, Yard Operations, Winnipeg
M. R. Reid	– District Crew Manager, Winnipeg

And on behalf of the Council:

J. D. Flegel	– Senior Vice-General Chairman, Saskatoon
D. C. Curtis	– General Chairman, Calgary
T. G. Hucker	– National Vice-President, Ottawa
T. Parson	– Local Chairman, Winnipeg

## **AWARD OF THE ARBITRATOR**

The record discloses that the grievor has been discharged on two prior occasions. His difficulties, stretching over a number of years, have been in relation to timekeeping and attendance. His first discharge was reversed by the Company by a deferral of discipline. When that did not appear to resolve his problems with respect to attendance at work, he was eventually dismissed. That resulted in the grievance heard in **CROA 2439**. This Arbitrator then again reinstated Mr. Shannon, subject to certain conditions.

Unfortunately, following his reinstatement in January of 1994, the grievor again made himself liable to discipline. In October of that year he was reprimanded for having ignored the proper procedures for reporting skidded wheels on a locomotive used on his tour of duty. In that case the Company resorted to Informal Handling as a means of avoiding any further jeopardy to Mr. Shannon. Shortly thereafter, on December 3, 1994 he slept in and was not available for the commencement of his regular assignment, as a result of which a replacement locomotive engineer was utilized. Again, notwithstanding that it might have taken strong action, the Company utilized Informal Handling, to give the grievor yet another chance. Next, in February of 1995, he again made himself liable to discipline for running through a switch. Out of concern for the vulnerability of his position, as he then stood at fifty demerits, he was assessed a caution by his employer.

The culminating incident occurred on September 10, 1995. The record reveals that on the prior day, Saturday, September 9, the grievor called the crew clerk and requested a twelve hour leave of absence. He did not, however, book off sick. In the result, the Company had every reason to expect him to be on his assignment on the morning of September 10, 1995. In fact, he failed to appear. Nor did he call the Company to give any further information as to his condition or whereabouts. Once again, a replacement locomotive engineer was obtained to cover for him.

Although the grievor stated during the course of his investigation that he believed that he had in fact called in sick, a fact which would have excused absence on September 10, the transcript of the conversation between himself and the crewing clerk clearly reveals that he specifically limited his request to a twelve hour leave, giving every indication to his employer that he would be at work the following day. In the result, the Arbitrator must agree with the Company that Mr. Shannon made himself liable to discipline for a deliberate or reckless disregard of his obligation to keep his employer informed of his circumstances, and to attend at work as scheduled.

Regrettably, this is a case which the Company is entitled to treat as a culminating incident. While the failure to appear at work on a single day may seem a minor infraction, not in itself deserving of discharge, the instant case involves much more. The Company has a long history of having patiently endured repeated failures on the part of Mr. Shannon to respect his obligations in relation to faithful attendance at work, good timekeeping and communication with his employer in respect of his availability. He has twice been reinstated from prior terminations and can now plead little, if anything, in the way of mitigating factors or circumstances. In the circumstances, the Arbitrator is compelled to conclude that the assessment of twenty demerits was within the appropriate range of discipline for the grievor's infraction on September 10, 1995. Indeed, an assessment of ten demerits would have placed him in a dismissable position. The grievance must therefore be dismissed.

May 17, 1996

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**