

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2798

Heard in Montreal, Tuesday, 10 December 1996

concerning

**VIA RAIL CANADA INC.**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

### **DISPUTE – BROTHERHOOD:**

Appeal of discipline assessed Locomotive Engineer R.F. Redding for failure to comply with instructions to attend a Corporation training course. In addition time claims submitted on behalf of R.F. Redding for loss of earnings.

### **DISPUTE – CORPORATION:**

The Union is appealing the discipline assessed to R.F. Redding (“the grievor”) on November 26, 1993 for his repeated failure to comply with the Corporation’s instructions to attend a training course for locomotive engineers.

### **BROTHERHOOD’S STATEMENT OF ISSUE**

On September 17, 1992, the Corporation remitted a letter to the Brotherhood, summarizing items proposed by the parties during a meeting on September 11, 1992 in connection with a new locomotive engineer training program.

The document contained the following clause: “The training program is mandatory, however, certain individuals may be exempted from attending as mutually agreed between the Regional Director of Transportation and the Local Chairperson concerned.”

Following a request (with explanation) for exemption from the classes which commenced in May, 1993, the Corporation acknowledged that Mr. Redding had valid grounds for such a request. In October 1993, the Corporation implemented an additional four courses and directed the grievor to choose a date or one would be assigned to him.

Mr. Redding once again requested an exemption, as his original reasons for not being able to attend were still ongoing. The Corporation not only refused to acknowledge his request, but held Mr. Redding out of service during the dates the four courses were scheduled and put him back to work between courses. The Corporation also held the grievor out of service prior to and following the investigation, which was held on November 25, 1995, wherein he was assessed “30 demerits and time out of service from November 28, 1993 to December 1, 1993 to count as a suspension for failure to comply with instructions to attend a company training program.

The Brotherhood appealed this case on the grounds that the Corporation violated article 71.2 of agreement 1.1, the discipline was unwarranted, all time claims submitted by Mr. Redding for loss of earnings were proper, and finally that the grievor be compensated for all monetary losses incurred as a result of this action.

The Corporation declined the Brotherhood’s appeal.

### **CORPORATION’S STATEMENT OF ISSUE**

In the fall of 1992, the Corporation instituted a training program for locomotive engineers to familiarize them with several different types of locomotives.

The course would run for four (4) days each time and would take place in Montreal.

The locomotive engineers were required to attend the course but were allowed to select the date they would attend. The course commenced in October 1992.

In May 1993, the grievor requested an exemption from the course due to alleged family problems. The Corporation allowed an exemption for a period of time but there was never any indication given that the grievor would not be required to take the course at some time.

In September 1993, the grievor was advised that he would finally have to select a date to take the course in Montreal. He refused to select a date but rather asked for a further exemption. This was denied and he was assigned to attend the course. He failed to attend the course four (4) times when he was instructed to do so by the Corporation.

The grievor was the subject of an investigation and disciplined effective November 26, 1993. He was assessed 30 demerits and time out of service, November 26, 1993 to December 1, 1993, as a suspension.

**FOR THE BROTHERHOOD:**

**(SGD.) C. HAMILTON**  
GENERAL CHAIRMAN

**FOR THE CORPORATION:**

**(SGD.) E. J. HOULIHAN**  
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Officer, Labour Contracts, Montreal
J. C. Grenier	– Labour Relations Officer (ret'd), Montreal
P. Marquis	– Labour Relations Officer, CNR, Toronto

And on behalf of the Brotherhood:

C. Hamilton	– General Chairman, Toronto
R. G. Woehl	– Local Chairman, Hornepayne
A. Doyle	– Vice-Local Chairman (VIA), Hornepayne

**AWARD OF THE ARBITRATOR**

Upon a review of the material submitted, the Arbitrator is satisfied that the grievor did wrongfully fail to comply with the instructions of his employer to attend a training course in Montreal. It appears that initially the grievor had valid reasons to request not attending, principally relating to a condition of his spouse which made it difficult for him to be away from her for any length of time. However, as disclosed in the evidence, after the Corporation excused Mr. Redding from the initial course in May of 1993, it later took the position that he should be able to attend subsequent training courses. To assist him, it offered to allow him to take the course in two-day segments, as opposed to a single four-day segment and, extraordinarily, also offered to cover the cost of his wife accompanying him to Montreal for the period of the course. The grievor nevertheless continued to refuse.

In all of the circumstances, the Arbitrator is compelled to conclude that the ultimate refusal of the grievor to ever attend the course, notwithstanding being repeatedly scheduled to do so on four separate occasions in October and November of 1993, did constitute an unreasonable failure to carry out a valid instruction given to him by his employer. Nor can the Arbitrator sustain the position of the Brotherhood that the scheduling of relief employees for the grievor at the time of the courses, whereby he was deprived of work, can fairly be said to constitute discipline without a prior investigation. As was its right, the Corporation did not surrender its authority to direct the grievor to attend subsequent regularly scheduled courses, merely because he had refused to attend a previous one. It was within its prerogatives to schedule him for each of the courses in question, and to arrange for the necessary relief assignment.

The Arbitrator has more difficulty, however, with the fact that the grievor was held out of service for the period from November 26 to December 1, 1993, pending his disciplinary investigation, and prior to the assessment of thirty demerits against him. This does not appear to the Arbitrator as a circumstance which would suggest a course of conduct or action on the part of the grievor which would call into question his employability, so as to justify his withdrawal from service. If anything, the grievor's removal from service pending the Corporation's decision amounts to a form of doubling of the penalty against him, particularly as the parties knew reasonably well the circumstances and reasons for his refusal to attend the training course. Additionally, it would appear to the Arbitrator that the

assessment of thirty of demerits is relatively severe for the infraction in question. While it is true that the course was of some importance to the Corporation, it is not disputed that, as reflected in a letter dated September 17, 1992, the Corporation did contemplate that some individuals might be entirely exempted from taking it, as could be mutually agreed between the Regional Director of Transportation and the Local Chairperson. I am, therefore, satisfied that this is an appropriate case for a substitution of penalty.

For the foregoing reason the grievance is allowed, in part. The Arbitrator directs that the discipline assessed against Locomotive Engineer Redding be reduced to fifteen demerits, and that he be compensated for wages and benefits lost by reason of his being held out of service pending the investigation.

December 16, 1996

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