

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2860

Heard in Calgary, Thursday, 15 May 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Appeal the discharge of Conductor J.D. Gehon of Saskatoon, Saskatchewan, effective 15 November 1996.

JOINT STATEMENT OF ISSUE:

Effective November 15, 1996, Mr. J.D. Gehon was discharged for the fraudulent submission of time claims, violation of CRO Rule 13(a) paragraph (iv), CRO Rule 14L paragraph (ii), GOI Section 5.10 D(1) and Section 6.1 Item 3(a) exceeding permissible zone speed Craik Subdivision Timetable 44 dated April 1996, during tours of duty train 547/548 25 October 1996.

The Union's position is that the grievor did not submit a false time claim to the Company. Further, the Union submits that the grievor should not be held equally responsible for any violation of the CRO Rules, 14L paragraph (ii), 13(a) or the speed infractions during his tour of duty.

The Union requests that the grievor be reinstated with full compensation and that his record be made whole.

The Company does not agree.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) J. T. TORCHIA
FOR: SENIOR VICE-PRESIDENT, CN

There appeared on behalf of the Company:

K. Morris	– Labour Relations Officer, Edmonton
J. T. Torchia	– Manager, Labour Relations, Edmonton
S. Michaud	– Assistant Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
D. Lanthier	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton
D. Van Cauwenbergh	– Labour Relations Officer, Edmonton

And on behalf of the Council:

D. Ellickson	– Counsel, Toronto
M. G. Eldridge	– Vice-General Chairman, Edmonton
J. D. Gehon	– Grievor

AWARD OF THE ARBITRATOR

The facts of the instant case are identical to those discussed in **CROA 2854**. The grievor was carelessly involved in the slowing of his train's operations by the incurring of an extensive meal delay at Davidson, which brought the crew within time limits which would allow the claiming of higher yard rates of pay. It is also not denied by the grievor that he was aware of certain rules infractions engaged in by the locomotive engineer. In mitigation of those offences, however, Mr. Gehon submits that he had great difficulty dealing with Locomotive Engineer Garbolinsky, and was effectively powerless to prevent the infractions which occurred.

The Arbitrator cannot accept that explanation. As difficult as personal relations can become within the cab of a locomotive, they cannot be invoked to justify a departure from operating rules whose purpose is to ensure the safety of train movements. A train conductor who fails to take action to prevent repeated infractions of the rules by a locomotive engineer, including excessive speed and the failure to sound the whistle and bell, cannot absolve him or herself from the ultimate responsibility which a conductor must bear for the movement of a train. The conductor who chooses to be inactive in the face of such a situation passes from being a witness to a co-participant.

For the reasons related in **CROA 2854**, the Arbitrator is satisfied that the time claims submitted by the crew cannot be fairly be characterized as tantamount to a deliberate falsification, of the kind which has previously been found to justify discharge. Moreover, given the quality of the grievor's prior record over eight years of service with the Company, his involvement in the carelessly slow movement of his train can fairly be characterized as being an uncharacteristic and isolated incident (cf **CROA 2351**). In all of the circumstances the Arbitrator is satisfied that this is an appropriate case for a substitution of penalty. The grievor shall be reinstated into his employment, without compensation or benefits, and without loss of seniority. The time out of service shall be recorded as a suspension for his involvement in slow production resulting in an abuse of the rates of pay system, and he shall further be assessed twenty-five demerits for the rules infractions, which are admitted.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR