

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2907

Heard in Calgary, Wednesday, 12 November 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Appeal the dismissal of Locomotive Engineer L.G. Winter of Regina, Saskatchewan effective October 28, 1996.

JOINT STATEMENT OF ISSUE:

Effective October 28, 1996, Mr. Winter was dismissed for the falsification of time claim for a tour of duty on train 539 October 13, 1996.

It is the Brotherhood's position that the dismissal of Locomotive Engineer Winter was unwarranted and he be compensated for all wages and benefits lost.

The Company declined the Brotherhood's request.

FOR THE COUNCIL: FOR THE COMPANY:

(SGD.) D. J. SHEWCHUK (SGD.) J. TORCHIA

FOR: GENERAL CHAIRMAN

FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh – Labour Relations Officer, Edmonton

J. Torchia – Manager, Labour Relations, Edmonton

J. Dixon – Assistant Manager, Labour Relations, Edmonton

K. Morris – Labour Relations Officer, Edmonton

S. Blackmore – Labour Relations Officer, Edmonton

And on behalf of the Council:

D. J. Shewchuk – Senior Vice-Chairman, Saskatoon

D. E. Brummund – Vice-Chairman, Kamloops

AWARD OF THE ARBITRATOR

The Arbitrator is not satisfied, upon a close review of the evidence, that the grievor knowingly submitted a false time claim for his tour of duty on train 539 on October 13, 1996. I am satisfied, however, that he did engage in a degree of recklessness, bordering on sharp practice, and deserving of a serious measure of discipline. While the Company's reaction to what it perceived to be a deliberate attempt to mislead his employer is understandable, the overall circumstances suggest that a substitution of penalty is appropriate in this case.

Locomotive Engineer Winter is a long service employee, first hired into Company service in 1978. While his prior disciplinary record is not exemplary, it was clear of any demerits at the time of the incident giving rise to his dismissal. More significantly, in the Arbitrator's view, there is no prior record of any discipline against the grievor for the false or fraudulent submission of a time claim. At the arbitration hearing Assistant Superintendent Edgar expressed the view that this was not, in his opinion, an isolated incident. He elaborated that there were previous circumstances in which trip tickets submitted by Locomotive Engineer Winter had been disallowed and at least one incident in which the grievor was counselled by his local union chairman to revise a wage claim which he had made, advice which he apparently followed. Significantly, however, the Company never previously disciplined Mr. Winter for his manner of submitting trip tickets, and indeed, prior to the incident at hand, which involves an over-claim of some \$42.00, never investigated him in that regard. In the circumstances, while the case is not without some difficulty, I am satisfied that the grievor's long service, and the absence of any prior discipline for similar conduct does justify a substitution of penalty. The grievor must, however, appreciate the importance of being clear and candid in the reporting of his working time in the future.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority, and without compensation for his wages and benefits lost, with the period from the time of his discharge to the date of reinstatement to be substituted as suspension. Mr. Winter must obviously appreciate the importance of bringing utmost care and integrity to the submission of his trip tickets in the future. His failure to do so may have the most serious of disciplinary consequences.

November 25, 1997

(signed) MICHEL G. PICHER

ARBITRATOR