

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3045

Heard in Calgary, Tuesday, 11 May 1999
concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS

(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

The assessment of 30 demerit marks for unacceptable and inappropriate conduct and subsequent dismissal of Locomotive Engineer R.W. Longworth, Coquitlam, B.C.

JOINT STATEMENT OF ISSUE:

On September 22, 1998 Locomotive Engineer Longworth refused to accept a proper call as a pilot for CP Train 352-980 which was to be run over the CNR Yale Subdivision.

Following a formal investigation, Locomotive Engineer Longworth's disciplinary record was annotated with "... 30 demerits for your unacceptable conduct; for your refusal to accept a proper call to pilot a fellow CPR locomotive engineer handling CPR train 352-980 which was detouring on the CN Yale Subdivision, despite (his) having attended CN/CP Rules Differences training and having become "CN qualified" on February 17, 1998, and despite having made a trip on the CN Yale Subdivision as recently as April 9, 1998 ..." Mr. Longworth was subsequently dismissed from Company service for "... the accumulation of in excess of 60 (sixty) demerit marks under the Brown System of Discipline..."

The Council asserts that Locomotive Engineer Longworth's refusal to accept the call for a CN Pilot was bona fide, along with the fact that no cost was incurred by the Company, nor any train delayed.

The Council further asserts that Engineer Longworth is a long-service employee of 23 years and requests the 30 demerit marks and any reference to inappropriate behaviour be removed from his record. The Council requests Locomotive Engineer Longworth's return to Company service with full compensation and benefits from the time he was removed from service.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SQQ.) **D. C. CURTIS**

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) **K. E. WEBB**

FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

R. Smith	- Labour Relations Officer, Calgary
D. A. Lypka	- Manager, Road Operations, Vancouver
L. J. Guenther	- Road Manager, Vancouver

And on behalf of the Council:

D. C. Curtis	- General Chairman, Calgary
T. G. Hucker	- Vice-President, Ottawa
J. Flegel	- Sr. Vice-General Chairman, Saskatoon
R. Lewis	- Jr. Vice-General Chairman, Revelstoke
R. S. McKenna	- General Chairman, Calgary
G. Ranson	- Local Chairman, Coquitlam
R. W. Longworth	- Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, beyond controversy, that Locomotive Engineer Longworth did refuse a call for service as a pilot to assist a fellow CPR locomotive engineer in moving train 352-980 over a segment of the Yale Subdivision of CN. The record confirms that Mr. Longworth had received familiarization with the territory in question commencing in January of 1998. While there appears to be some dispute about precisely when the grievor would have been qualified, in the Company's submission he was so viewed in February of 1998. Given that the grievor complained of missed trips in early April of 1998, his own conduct would indicate that he viewed himself as qualified as of that time.

It is common ground that the refusal of assignment which led to the assessment of thirty demerits against Mr. Longworth occurred on September 22, 1998. His last piloting trip on the Yale Subdivision of CN prior to that date was on April 9, 1998. Under the terms of the CN/CP Pilotless Detour Agreement, to which the Brotherhood is also a party, Mr. Longworth would have been entitled to the opportunity to make a refresher trip on the territory within six months of his last trip. It would appear that he was within eight days of that time when he was requested to handle train 352-980 on September 22, 1998.

The Company's view is that the grievor had no *bona fide* excuse for declining to accept the pilot assignment for which he was called on September 22. Mr. Longworth, on the other hand, maintains that he had safety concerns which caused him to decline the work. He relates that he had shortly before that time returned from scheduled vacation and that, given that he had not operated over the territory for close to six months, during which time certain timetable changes had been made, as well as some physical alteration to switches, he did not feel sufficiently familiar to perform the work safely.

The Company relies on the fact that when Mr. Longworth transferred from the Cascade Subdivision to the Mission Subdivision in April of 1998 he advised Company representatives that he would no longer be performing pilot service on the Yale Subdivision of CN. It does not appear disputed, however, that the likelihood of his being called as a pilot from the Mission Subdivision was relatively remote. Nevertheless the Company interprets his comment as an indication that he simply did not wish to perform that work. The grievor, on the other hand, maintains that he was

unfamiliar with the changes in the territory, and, not having received a refresher opportunity, felt that he was justified, if not obligated, to refuse the assignment.

While the parties argued certain aspects of the qualification provisions of article 4 of the CN/CP Pilotless Detour Agreement, as well as article 9 which governs the entitlement to refresher trips, the Arbitrator is not seized of a grievance concerning the interpretation of those provisions, and need not comment upon them for the purposes of this matter. Suffice it to say, however, that there appears to be a difference of understanding between the parties as to the meaning of those provisions which should be subject to mutual discussion and resolution.

Upon a review of the material before me I am satisfied that there was a degree of legitimate concern in the mind of Locomotive Engineer Longworth when he declined to accept the pilot's assignment on September 22, 1998. His communications with the crewing clerk make it clear that Mr. Longworth did not feel that he was then qualified to pilot the train movement in question. That was further elaborated upon in his answers during the course of the Company's disciplinary investigation, where he expressly cited concerns prompted by the changes in the CN timetable on the territory as well as certain physical alterations which had occurred since his last trip over the territory.

Obviously, this problem would not have arisen had the grievor undergone the refresher trip contemplated within article 9.1 of the Pilotless Detour Agreement. In considering this aspect, I am satisfied that the parties share a degree of responsibility in respect of that failure. On the one hand it would appear reasonable that the Company should be diligent in communicating to employees whose qualification might lapse that they were due to take a refresher run before the expiry of six months. On the other hand, it appears to the Arbitrator equally reasonable to expect a locomotive engineer in the position of the grievor to bring to the Company's attention his need for the refamiliarization at some point in time reasonably before the expiry of the six months contemplated within the agreement. On the material before me the Company apparently did not contact Mr. Longworth to facilitate a refresher trip, nor did the grievor take any positive steps in that regard. In my view what transpired can fairly be characterized as a mutual oversight which led to the grievor's refusal of the assignment.

In the result, the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority, and with compensation for one-half of the wages and benefits lost, with his record to stand at fifty-five demerits. It is to be hoped that Mr. Longworth will appreciate that this award is not an exoneration of his conduct, and that he remains in a precarious positions as regards his overall disciplinary record.

May 14, 1999

MICHEL G. PICHER
ARBITRATOR