CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3094
Heard in Montreal, Thursday, 10 February 2000
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Appeal the discipline, thirty (30) demerits for "participation in concerted job action from on August 3-5, 1999" assessed to Locomotive Engineer F. Schultz of Vancouver, B.C.

Appeal the discharge assessed to Locomotive Engineer F. Schultz of Vancouver, B.C. effective October 22, 1999 for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On September 28, 1999, Locomotive Engineer F. Schultz provided an employee statement relative to his alleged participation in an illegal work stoppage at he Greater Vancouver Terminal from August 3 to August 5, 1999. On October 22, 1999 Locomotive Engineer Schultz was assessed thirty (30) demerits and was subsequently discharged for accumulation of demerits.

It is the Brotherhood's position that there is sufficient and other evidence to support the verification of a reasonable excuse for booking unfit on August 4 and 5, 1999. Further, the Brotherhood claims that the Company has not satisfied or discharged their onus or responsibility to prove their allegations against Locomotive Engineer Schultz that he participated in an illegal work stoppage from August 3 to 5, 1999.

It is also the Brotherhood's position that the thirty (30) demerits assessed Locomotive Engineer Schultz and his subsequent discharge are totally unwarranted.

The Brotherhood has requested that thirty (30) demerits assessed to Locomotive Engineer Schultz be removed from his record, and that he be reinstated with full compensation for all wages and benefits lost from October 22, 1999.

The Company disagrees and has declined the Brotherhood's appeal.

FOR THE COUNCIL:	**FOR THE COMPANY:**
(SGD.) M. W. SIMPSON	**(SGD.) R. RENY**
GENERAL CHAIRMAN	FOR: **ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:
R. Reny - Human Resources Associate - Pacific Division, Vancouver

R. K. MacDougall - Counsel, Montreal
S. Michaud - Business Partner - HR, Pacific Division, Edmonton
J. Vena - Superintendent, Operations, Vancouver
R. Eisenman - Transportation Supervisor, Vancouver
E. Storms - Operations Manager, Crew Management Centre, Edmonton

And on behalf of the Council:

B. McHolm. - Counsel, Saskatoon
D.J.Shewchuk - Sr. Vice-General Chairman, Saskatoon
G. Halld - Canadian Director, BLE, Ottawa
R. E. Lee - Local Chairman, Vancouver
F. Schultz - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, on the balance of probabilities, that on August 4 and 5, 1999 the Company suffered a concerted work stoppage by reason of the withdrawal of services of some ninety-five locomotive engineers, most of whom attended a special union meeting conducted on the two days in question.

The grievor maintains that he booked off sick at the conclusion of his tour of duty on August 3rd. He submits that he did so because he was suffering from blistered feet. Although Mr. Schultz maintains that he made specific reference to the condition of his feet in his telephone conversation with the crewing clerk at the Crew Management Centre in Edmonton, a tape recording of that conversation, tendered in evidence by the Company, does not support the grievor's recollection. Nor does it appear that the grievor obtained medical attention for his alleged condition on the following day. In fact, it appears that he first visited his doctor on August 9, 1999, the same day he received a notice to appear at an investigation in relation to the work stoppage. A doctor's note, apparently obtained on December 13, 1999 states that the grievor was seen by the doctor on August 9, 1999 for a sinus infection, and apparently made some comment to the doctor about his foot blisters, but that there was no need to examine him in that regard. In the Arbitrator's view that doctor's note is an ex post facto self-serving document of little or no probative weight as to his condition on August 4.

On the whole, the Arbitrator is not satisfied with the grievor's explanation for his absence, which coincided with the absence from work of close to the entire work force of locomotive engineers. I am satisfied, on the balance of probabilities, that he did absent himself to withhold his services in concert with others, and that the thirty demerits assessed against him was an appropriate penalty in the circumstances.

The grievance is therefore dismissed.

February 12, 2000

MICHEL G. PICHER
ARBITRATOR