

CANADIAN RAILWAY **OFFICE OF ARBITRATION**

CASE NO. 3149

Heard in Montreal, Wednesday, 11 October 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISEUTE:

Appeal the discipline assessed the record of Locomotive Engineer F.R. Boulet of Vancouver, B.C.

JOINT STATEMENT OF ISSUE:

On august 4, 1999 at approximately 00:10, Locomotive Engineer Boulet booked off sick, which continued until approximately August 5, 1999.

On August 19, 1999, Locomotive Engineer Boulet was required to provide a formal employee statement in connection with his alleged participation in an illegal work stoppage from August 3rd to 5th, 1999 at Vancouver, B.C., including the Greater Vancouver Terminal. Locomotive Engineer Boulet was subsequently assessed thirty (30) demerits for: "your participation in a concerted job action from August 3rd to August 5th, 1999 at Vancouver, B.C., including the Greater Vancouver Terminal."

The Brotherhood appealed the assessment of discipline to Locomotive Engineer Boulet on the grounds that the Company has not discharged the burden of proof to establish that Mr., Boulet participated in a concerted job action and in view of the evidence, the Company did not establish such proof.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SOD.) Q. J. SHEWCHUK

FOR: **GENERAL CHAIRMAN**
RELATIONS

FOR THE COMPANY:

(SGD.) R. RENY

FOR; ASSISTANT VICE-PRESIDENT. LABOUR

There appeared on behalf of the Company:

R. Reny	- Human Resources Associate, Vancouver
J. C. McDonnell	- Counsel, Montreal
R. Eisenman	- Terminal Transportation Supervisor, Surrey

And on behalf of the Council:

D. J. Shewchuk	- Sr. Vice-General Chairman, Saskatoon
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AWARD OF THE ARBITRATOR

Prior awards of this Office establish that bargaining unit employees at the Vancouver

Terminal engaged in an unlawful withholding of their services on August 4 and 5, 1999. Some one hundred of them attended union meetings on both of the dates in question **(CROA 3090)**.

The instant case involves a dispute as to whether the grievor participated in the unlawful work stoppage. The evidence confirms that Locomotive Engineer F.R. Boulet booked sick at approximately 00:10 on August 4, 1999. The evidence further discloses that two telephone messages relayed to the grievors answering machine by the CMC manager on August 4, 1999 did not result in any return calls by the grievor. It is also admitted that Mr. Boulet did attend the union meeting of August 5, 1999.

In his investigative statement the grievor relates that he attended at a doctor's appointment on August 4, apparently for a condition involving intestinal cramps and diarrhoea. He did present the Company with a medical note dated August 4, 1999 stating "the above is unfit for work for medical reason today". No such documentation is provided, however, in respect of the following day of the work stoppage, August 5, 1999.

On balance the Arbitrator is persuaded that the grievor did in fact participate, at least partially, in the unlawful work stoppage. There is no medical certificate to confirm any genuine excuse for his unavailability for work on August 5. In addition, whatever his condition, he was obviously well enough. to attend the union meeting on that date. On the balance of probabilities the Arbitrator concludes that the grievor did in fact participate in the unlawful work stoppage, and that the assessment of thirty demerits was appropriate in the circumstances.

The grievance must therefore be dismissed

October 13, 2000

MICHEL G. PICHER
ARBITRATOR