

CANADIAN RAILWAY OFFICE OF **ARBITRATION**  
CASE NO. 3152  
Heard in Montreal, Wednesday, 11 October 2000  
concerning  
CANADIAN NATIONAL RAILWAY COMPANY  
and  
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

**DISPUTE:**

Appeal the discipline assessed the record of Locomotive Engineer G. Kamlade of Vancouver, B.C.

**JOINT STATEMENT-OF ISSUE**

On August 3, 1999, Locomotive Engineer Kamlade booked off sick, which continued until approximately August 5, 1999

On October 14, 1999, Locomotive Engineer Kamlade 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 Kamlade 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 Kamlade on the grounds that the Company has not discharged the burden of proof to establish that Mr. Kamlade participated in a concerted job action and in view of the evidence, the Company did not establish such proof.

The Brotherhood therefore requested that the discipline assessed against Locomotive Engineer Kamlade be removed from his personal record.

The Company declined the Union's appeal-

**FOR THE COUNCIL:**

(sGD.)!2. J. SHEWCHU

FOR; GENERAL C14AIRMAN

**FOR THE COMPANY:**

LsGb.)\_R. RENY

FOR: ASSISTANT VICE-PRESIDENT, **LA13OUR**

**RELATIONS**

There appeared on behalf of the Company:

R. Reny Human Resources Associate, Vancouver

J. C. McDonnell Counsel, Montreal

R. Eisenman Terminal Transportation Supervisor, Surry

And on behalf of the Council,

D. J. Shewchuk Sr. Vice-General Chairman, Saskatoon

**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 grievor, Locomotive Engineer G. Kamlade, booked off Sick at 10:10 on August 3, 1999. Although the grievor did subsequently provide to the Company a very terse medical note dated August 3, 1999 which stated "Off work, today and tomorrow, due to illness", the overall evidence presented on the behalf of the grievor is less than persuasive. He declined to return two telephone calls from the Company, when messages were left requesting him to do so. The Arbitrator doubts the response of the grievor during the course of his investigation to the effect that he did not get the messages relayed to him by telephone, one of which was received by a female occupant of his home. Additionally, there is no documented reason excusing the grievor's absence on August 5, nor anything to document his assertion that the

reason for his absence on the 4th was, "Probably the flu."

The grievance must therefore be dismissed.

October 13, 2000

MICHEL G. PICHER  
ARBITRATOR