

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3163
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 R.A. Rennie of Vancouver, B.C.

JOINT STATEMENT OF ISSUE:

On August 5, 1999, at 06:23 Locomotive Engineer Rennie booked off sick, which continued until approximately August 5, 1999.

On October 4, 1999, Locomotive Engineer Rennie 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 Rennie 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 Rennie on the grounds that the Company has not discharged the burden *of proof* to establish that Mr. Rennie 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 Rennie be removed from *his* personal record.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) **Q. J. SHEWCHUK**

FOR: GENERAL CHAIRMAN

RELATIONS

FOR THE COMPANY

(SOD.) **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. Gisenman	- 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. After his tour of duty on August 4, 1999 at 07:15 (PT) the grievor, Locomotive Engineer J.A. Rennie, booked twenty-four hours' rest. Subsequently, at 06:23 (PT) on August 5 he contacted the CIVIC requesting that he be shown as sick, He booked on later the same day at approximately 17:02 (PT).

The grievor attempted to justify his absence on two separate grounds. Firstly he claimed that he felt back pain on August 5. Secondly he noted that he had received a telephone call from MedCan, the Company's health care management contractor, advising that he needed to have his eyes tested. It appears that he then booked an eye appointment for that same day, although there is no evidence to suggest that there was any urgency to the matter.

On the whole the Arbitrator finds the grievor's explanation for his booking off sick for a period of some ten and one-half hours on August 5, 1999 to be unpersuasive, There is no medical documentation to confirm that he suffered a back condition which made it impossible for him to work, or any suggestion that there was any urgency to the MedCan request for a further eye test. I am satisfied, on the balance of probabilities, that the grievor did wilfully participate in the withholding of his Services in concert with other employees on August 5, 1999. He was therefore deserving of a serious degree of discipline.

The grievance must therefore be dismissed.

October 13, 2000

MICHEL G. PICHER
ARBITRATOR