

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3154
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 L.A. Kaplar of Vancouver, B.C.

JOINT STATEMENT OF ISSUE:

On August 4, 1999. at approximately 02:45, Locomotive Engineer Kaplar booked off sick, which continued until approximately August 5, 1999.

On August 26, 1999, Locomotive Engineer Kaplar 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 Kaplar 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 Kaplar on the grounds that the Company has not discharged the burden of proof to establish that Mr. Kaplar 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 Kaplar be removed from his personal record.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGQ.) **Q. J. SHEWCHUK**

FOR. GENERAL CHAIRMAN

RELATIONS

FOR THE **COMPANY:**

LSGD.) 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, 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 L.A. Kaplar, booked unfit while booking off duty at 02:05 on August 4, 1999. It is common ground that he first attempted to book rest, but was advised that he was not entitled to do so. It is only then that he indicated that he wished to be booked unfit.

During the course of his disciplinary investigation the grievor maintained that he intended to see his chiropractor, as he was suffering pain in his upper and lower back. That claim is supported by a note from his chiropractor dated August 5, 1999 which states: "Mr. Kaplar attended treatment today for middle to lower back pain. This note is to verify his attendance at my office." It is not disputed that back problems are a matter of record for the grievor, as reflected in other documentation submitted before the Arbitrator.

On balance the Arbitrator is satisfied that the grievor did have a legitimate reason for his booking unfit for work on August 4 and 5, 1999. It may also be noted that he did not attend the union meetings on either day.

The grievance is therefore allowed. The Arbitrator directs that the thirty demerits assessed against the grievor be stricken from his record.

October 13, 2000

MICHEL G. PICHER
ARBITRATOR