

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3000

Heard in Calgary, Wednesday, 11 November 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the discharge of Locomotive Engineer W.K. Stanhope of Edmonton, AB for the violation of CROR Rule 105 and CROR Rule 104(k) resulting in side collision and derailment of hump engine 7518 and rear 3 cars of train 402 at Walker Yard XC04 crossover on October 14, 1996.

JOINT STATEMENT OF ISSUE:

On October 14, 1996, Mr. Stanhope was employed as locomotive engineer on the 07:55 Hump Assignment. While making an eastward movement on track CF63, with a train consist of 13 loads, 79 empties, 4231 tons, Locomotive Engineer Stanhope collided with train 402 derailing three (3) cars and locomotive 7518.

Following an investigation into the incident, Locomotive Engineer Stanhope was discharged for: violation of CROR Rule 104(k) resulting in side collision and derailment of hump engine 7518 and rear 3 cars of train 402 at Walker Yard XC04 crossover.

The Brotherhood appealed the decision of the Company to discharge Mr. Stanhope on the grounds that the penalty imposed is too severe. The Brotherhood has requested Mr. Stanhope's reinstatement and, due to the particular circumstances of this case, included the option of reinstatement to a position other than a locomotive engineer.

The Company declined the appeal.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) KERRY MORRIS

FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

S. M. Blackmore	– Labour Relations Associate, Great Plains District, Edmonton
J. Bauer	– Human Resources Business Partner, Great Plains District, Edmonton
A. E. Heft	– Manager, Labour Relations, Toronto
K. Morris	– Human Resources Associate, Great Plains District, Edmonton
L. Bronson	– District Superintendent, Transportation, Great Plains District, Edmonton

And on behalf of the Council:

D. J. Shewchuk	– Sr. Vice-General Chairman, Saskatoon
D. Brummund	– Vice-General Chairman, Kamloops
Wm. K. Stanhope	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that Locomotive Engineer Stanhope was responsible for violations of CROR rule 105 and rule 104(k) on the occasion of a side collision between his own movement and another train when he was in charge of the 0755 hump yard assignment in Walker Yard on October 14, 1996. The collision involved the derailment of one locomotive and three cars, and damage in the amount of \$7,500.00.

Unfortunately the grievor's record with respect to rules infractions is most unimpressive. Hired in 1980 and promoted to conductor in 1982, Mr. Stanhope was qualified as a locomotive engineer in November of 1986. In April of 1992 he was assessed fifteen demerits for a violation of CROR rule 104(k), which resulted in a side collision between diesel units and a consequent derailment. On March 30, 1993 he was suspended and required to re-qualify as a locomotive engineer for a violation of CROR rule 429. He was at that time compelled to undergo a restriction and retraining for a period of forty-two days. On December 23, 1993 he was restricted from working as a locomotive engineer for the period of one year, following a further violation of CROR rule 104(k), also occasioning a side collision. Additionally, in January and February of 1994 he was compelled to take re-education as a trainman/yardman, following on the restriction imposed in December of 1993.

The record before the Arbitrator demonstrates that the Company has been systematic in the application of progressive discipline to Mr. Stanhope. It has, over a number of repeat offences, particularly in relation to CROR rule 104(k), given him every opportunity to reflect upon his errors and to correct the level of care and attention which he brings to the responsibilities of a running trades employee. Unfortunately the efforts of the Company have been fruitless. Nor can the Arbitrator sustain the argument of the Council, in the particular facts of this case, that the termination of the grievor was inappropriate given that his disciplinary record was clear at the time of the incident. While it is true that some prior cases in this Office have indicated the assessment of demerits at a somewhat lower level for similar rules infractions, those awards cannot be viewed in isolation. In each case regard must be had to the circumstances giving rise to the discipline and the work history and prior record of the employee in question. In the instant case, with sixteen years of service Mr. Stanhope cannot claim extraordinary longevity of service. Most significantly, as related above, his record of repeated rules infractions, notwithstanding the application of progressive discipline by the employer, leads to the unfortunate conclusion that his continued employment as a running trades employee is no longer viable.

For all of the foregoing reasons the grievance must be dismissed.

November 17, 1998

(signed) MICHEL G. PICHER
ARBITRATOR