

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3158
Heard in Calgary, Tuesday, November 14, 2000
Concerning
CANADIAN NATIONAL RAILWAY COMPANY
And
CANADIAN COUNSEL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Appeal of the fourteen (14) day suspension subsequently reduced to a seven (7) day suspension assessed the record of Locomotive Engineer J.R. Conroy of Vancouver, B.C. for his responsibility in the submission of a fraudulent time claim on October 30, 1998 for his tour of duty on the extra 23:45 Vancouver Transfer assignment on October 29, 1997.

JOINT STATEMENT OF ISSUE:

On October 29, 1999, Conroy was employed as the locomotive engineer on the 23:45 Vancouver Transfer assignment which was required to work overtime. After the completion of his shift Locomotive Engineer Conroy was inadvertently showed off duty at 10:45 instead of his actual off duty time of 09:45. Upon learning of this error, Mr. Conroy corrected his mistake. On November 10, 1999, Mr. Conroy was served a notice to appear for an employee investigation and did provide an employee statement on November 30, 1999.

Following the investigation process, Locomotive Engineer Conroy was assessed a fourteen (14) day suspension subsequently reduced to a seven (7) day suspension.

The Brotherhood appealed the discipline on the grounds that Locomotive Engineer Conroy did not knowingly submit a fraudulent time for the purpose of deliberately misleading the Company. Locomotive Engineer Conroy made a simple mistake in inputting his off duty time into the computer, which was corrected when he learned of his mistake, and for which he did not receive any compensation.

The Brotherhood therefore requested the discipline assessed Locomotive Engineer Conroy be removed from his personal record and that he be compensated for all lost wages and benefits.

The Company denied the Union's appeal.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. RENY

FOR: VICE-PRESIDENT, LABOUR RELATIONS

Appearing on behalf of the Company:

S. Ziemer	- Human Resources Associate, Vancouver
R. Reny	- Human Resources Associate, Vancouver
S. Michaud	- Business Partner, Human Resources, Vancouver
S. Blackmore	- Human Resources Associate, Edmonton
R. Eisenman	- Transportation Supervisor, Vancouver
D. C. McDonnell	- Legal Counsel, Montreal

Appearing on behalf of the Council:

D.J. Shewchuk	- Vice-General Chairman, Saskatoon
D. E. Brummond	- Vice-General Chairman, Kamloops
G. Broda	- GST, Yorkton
B. Shack	- Local Chairman, Edson
R. Ermet	- Local Chairman, Jasper

AWARD OF THE ARBITRATOR

The issue in the case at hand is whether the grievor was deserving of discipline, and whether a seven day suspension was appropriate, in light of his time claim submitted on October 30, 1999.

The material before the Arbitrator confirms, beyond dispute, that as part of that claim, Mr. Conroy made a hot meal claim on behalf of himself and his conductor, Mr. R.E. Locke. It is common ground, however, that Mr. Locke departed the Lynn Creek Yard at the conclusion of his work with the grievor, advising that he was going home. Conductor Locke apparently asked Mr. Conroy to enter his booking off time into the CATS computer system when he did his own booking off, which the grievor agreed to do. On any interpretation of the facts, therefore, it appears undeniable that Mr. Conroy deliberately made a hot meal claim for Conductor Locke which he knew was false.

In addition, the evidence confirms that not only did Mr. Conroy not have the hot meal together with his crew member, "as a unit," as contemplated within article 48.2 of the collective agreement, but he also went on a considerable journey of his

own, to a restaurant near his own place of residence, to take his hot meal. Thereafter he proceeded to enter his tie-up in the CATS terminal at the Lulu Island yard office, some eighteen kilometres distant from the Vancouver Main Terminal office where he proceeded after leaving Mr. Locke at Lynn Creek, it being the point where their assignment commenced and finished, and where Mr. Conroy's car was located.

It is common ground that upon being summoned for an investigation Mr. Conroy corrected his CATS entry to reduce his time claim by one hour. That action is explained by his ostensible belief that he had erroneously entered the time of 10:45 for himself, and upon reconsideration realized that 9:45 would have been more appropriate for the time which would normally be allotted for his hot meal.

The Arbitrator is not persuaded. On the balance of probabilities, it appears that Mr. Conroy took liberties with the booking off process, both on behalf of himself and Mr. Locke, in a manner inconsistent with his obligation to his employer, and which call his credibility into question. Given his obvious willingness to enter a hot meal claim on behalf of Mr. Locke, whom he knew had no intention of taking a hot meal, there is little reason to give Mr. Conroy the benefit of the doubt on any other aspect of this questionable sequence of events.

On balance, I am satisfied that the Company had reasonable grounds to assess discipline in the circumstances. I am satisfied that a seven day suspension was within the appropriate range of discipline, and should not be disturbed. The grievance must therefore be dismissed.

November 20, 2000

MICHEL G. PICHER
ARBITRATOR