

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3252

**Heard in Calgary, Tuesday, 14 May 2002
concerning**

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Appeal of the assessment of ten (10) demerits to the personal record of Locomotive Engineer C.B. Kostyshin of Vancouver, B.C. for "failure to prepare yourself adequately to accept a call, in turn, for train 791 at Boston Bar on September 9, 1999.

COUNCIL'S STATEMENT OF ISSUE:

On September 8, 1999, Locomotive Engineer Kostyshin was called in straightaway service from Thornton Yard to Boston Bar, for 06:30. Upon arrival at Boston Bar, Mr. Kostyshin booked off duty at 13:20 with no rest booked. Due to initial line up information progressively falling back, and additionally, noise in the bunkhouse, the grievor was unable to properly prepare himself for duty and upon being called on train 791 for 02:00, on September 9, 1999, he was essentially booked unfit by the Crew Management Centre.

An investigation was conducted by the Company and the grievor was subsequently assessed ten (10) demerits.

The Brotherhood contends that the discipline assessed to the personal record of Locomotive Engineer Kostyshin was unwarranted under the circumstances and the same must be expunged.

The Company has declined the Brotherhood's appeal.

FOR THE COUNCIL:

(SGD.) Q. E. BRUMMUND FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. Reny - Manager, Human Resources, Vancouver
E. Blokzyl - Superintendent, BC South Zone
S. Blackmore - Manager, Human Resources, Edmonton
J. Torchia - Director, Labour Relations, Edmonton

And on behalf of the Council:

D. E. Brummund - Senior Vice-General Chairman, Edmonton
R. J. Ermet - Local Chairman, Jasper
R. Allen - Local Chairman, Biggar

AWARD OF THE ARBITRATOR

On a review of the evidence the Arbitrator is satisfied that the Company did not have a sufficient basis to assess ten demerits against the record of Locomotive Engineer Kostyshin. The unchallenged evidence of the grievor is that while off duty at Boston Bar on the afternoon and evening of September 8 to 9, 1999 he was unable to get sufficient sleep before being called on train 791 for 02:00. Bearing in mind that the Company has the burden of proof, there is nothing in the material which contradicts the grievor's account of his being disturbed by the noise of a construction crew in the bunkhouse for part of the day, and generally being unable to sleep properly thereafter.

It appears well settled that, as a general rule, running trades employees are to be the judge of their own physical fitness to safely perform the assignments for which they are called (see CROA 1759, 1854, 2248 and 3232). That is not to say that the Company might not properly bring discipline to bear against an employee who demonstrates a pattern of repeatedly refusing calls in circumstances where he or she had every reasonable opportunity to obtain the necessary rest. No such pattern is disclosed in the case at hand. Indeed, it would appear that there is no prior discipline against the grievor for improperly refusing a call. I am satisfied that in the case at hand, by no fault of his own, the grievor was not properly rested when he declined the call.

For all of the foregoing reasons the grievance is allowed. The Arbitrator directs that the ten demerits assessed against Locomotive Engineer Kostyshin be removed from his record forthwith.

May 21, 2002

(signed) MICHEL G. PICHER
ARBITRATOR