

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3272

Heard in Montreal, Thursday, 13 June 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

The assessment of a sixty (60) day suspension to D.E. Holden of Edmonton, Alberta for improper submission of a time claim.

EX PARTE STATEMENT OF ISSUE:

On November 14, 1999 Dan Holden was working as conductor on train 514. This assignment's primary job is to switch the plant at Beamer. This entails handling dangerous commodities and documentation for same.

Upon return to Edmonton Mr. Holden discovered that he was missing some of the documentation. He returned to Beamer in his personal vehicle, located the missing documents and came back to Edmonton to complete his assignment.

These actions resulted in significant delay in Mr. Holden reporting off duty. After performing his required duties, Mr. Holden reported himself and crew off duty, resulting in two and one half hours overtime.

The Company assessed Mr. Holden a sixty (60) day suspension, following an investigation.

The Union contends that, given the circumstances, a sixty day suspension is excessive and should be mitigated to a lesser degree.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) B. R. BOECHLER

for: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

- S. Blackmore – Manager, Human Resources, Edmonton
- B. Kalin – Superintendent Operations, Edmonton
- A. Giroux – Counsel, Montreal

And on behalf of the Council:

- M. Church – Counsel, Toronto
- B. R. Boechler – Vice-General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, on the balance of probabilities, that the grievor did improperly enter time claims for two members of his crew. The evidence discloses that at the conclusion of his tour of duty, on November 14, 1999, Conductor Holden proceeded to make computer entries to the On-Board Reporting System (OBRS), having indicated to his workmates that he would book them off. In fact, however, he soon realized that he had misplaced documentation in relation to a number of cars containing dangerous commodities at Beamer. He then arranged for his female companion to drive him to Beamer to recover the documentation, which he succeeded in finding. Upon his return to Walker Yard he then entered a two and a half hour overtime claim for himself as well as his workmates, the overtime being in relation to the time expended by him in travelling to and from Beamer to recover the documentation, as well as certain other duties in relation to booking off his crew.

The discipline assessed against Mr. Holden is solely for the “improper submission of time claim for himself and fellow employees ...” for the day in question. The Company does not allege any fraudulent intent on the part of Mr. Holden. Indeed, the evidence before the Arbitrator confirms, based on the computer entries made by Mr. Holden in the OBRS system, that he did in fact expend the time claimed working on the computer, apparently using a laptop, while being driven to and from Beamer by his companion. He was not disciplined for being out of possession of the dangerous commodities documentation, for failing to report their loss or for attempting to conceal what may have transpired. In the result, the grievance resolves itself into issue of whether the assessment of a two month suspension was appropriate in all of the circumstances.

Having regard to the totality of the evidence the Arbitrator is persuaded that the discipline assessed was excessive. It is true that additional payments in the order of sixty dollars to each of his crew members would have resulted from the grievor's action. However, as noted above, it is not suggested that Mr. Holden sought to gain any benefit for himself or acted to defraud his employer. The instant case can fairly be characterized as involving a serious error of judgement on the grievor's part, rather than the pursuit of a sinister motive. While the Arbitrator appreciates that the Company must use firm discipline to deter any abuse of the filing of time claims by employees who function in a largely unsupervised work setting, it is also true that each case must be determined on its own particular facts, with all mitigating factors being taken into account. In the instant case there is no suggestion of a fraudulent intent, and an implicit recognition that what the grievor engaged in was an act of carelessness or inadvertence in dereliction of his obligation of diligence in reporting the time worked by himself and his crew.

In the Arbitrator's view the failure to meet the obligation of due diligence, in the facts as disclosed, would properly have rendered the grievor liable to a suspension. That is particularly so as the level of his demerits was such as to render him dismissible in the event of the assessment of any significant number of demerits, at the level of fifteen or more. That said, however, the removal of an individual from the workplace, and from gainful employment, for a period of two months is extreme in the circumstances. I am satisfied that the assessment of a ten day suspension would have been sufficient to bring home to the grievor the importance of being careful in timekeeping on behalf of himself and his crew, and that the Company reasonably should have appreciated that a suspension of that dimension would be within the appropriate range.

The grievance is therefore allowed, in part. The Arbitrator directs that a suspension of ten working days be substituted for the sixty day suspension assessed against the grievor. He shall be compensated for the difference in all wages and benefits lost.

June 14, 2002

(signed) MICHEL G. PICHER
ARBITRATOR