

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3306

Heard in Calgary, Thursday, 14 November 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal the discipline assessed to the personal record of Locomotive Engineer B. Zalkowsky of Edmonton, AB, for "Unsatisfactory work record during the period July 1, 2001 to July 13, 2001."

JOINT STATEMENT OF ISSUE:

On July 13, 2001, Locomotive Engineer Zalkowsky appeared at a Company investigation in connection with alleged work record irregularities between July 1, 2001 and July 13, 2001. As the result of and subsequent to the investigation, the grievor was assessed fifteen (15) demerits to his personal record.

The Brotherhood contends that the grievor was not given the opportunity to have a fair and impartial hearing, as outlined in article 86, paragraph 86.1 of collective agreement 1.2.

The Brotherhood further contends that the Company has not determined the grievor's responsibility with respect to the instant matter, that would in turn attract the discipline imposed, as required under the terms and conditions of article 86, paragraph 86.1 of collective agreement 1.2

The Brotherhood has requested that the discipline assessed be expunged; however, the Company disagrees with the Brotherhood's position.

FOR THE BROTHERHOOD:

(SGD.) D. E. BRUMMUND
(FOR) GENERAL CHAIRMAN
RELATIONS

FOR THE COMPANY:

(SGD.) S. BLACKMORE
FOR: VICE-PRESIDENT, LABOUR

There appeared on behalf of the Company:

S. Blackmore	- Manager, Human Resources, Edmonton
D. VanCauwenburgh	- Manager, Human Resources, Winnipeg
J. Berriault	- Transportation Supervisor, Vancouver
B. Kalin	- Superintendent, Edmonton
K. Guiney	- Manager, Human Resources, Transcona

And on behalf of the Brotherhood:

B. McHolm	- Counsel, Saskatoon
D. E. Brummund	- Sr. Vice-General Chairman, Edmonton
B. Zalkowsky	- Grievor

AWARD OF THE ARBITRATOR

The Brotherhood initially challenges the investigation conducted by the Company, claiming that it is in violation of the standard of a fair and impartial hearing as mandated by article 86 of the collective agreement. The Arbitrator cannot sustain the Brotherhood's position. The material before the Arbitrator confirms that the notice provided to Locomotive Engineer Zalkowsky made it clear that he was being investigated for an unsatisfactory work record for the period of July 1, 2000 to the date of the investigation. Moreover, the Arbitrator sees no unfairness in the fact that the Company presented the grievor with its own computerized attendance records for the period at the outset of the investigation. It does not appear disputed that Mr. Zalkowsky and his representative were given the opportunity to review the documentation before commencing the actual investigation, and that when the grievor expressed some confusion as to the content of the documents he was given the investigating officer's explanation of their content, and explanation which I am satisfied explained the data material to the investigation. The fact that certain computer designations in the documentations was understood by neither the grievor nor the investigating officer does not constitute a deviation from the standard of a fair and impartial investigation.

The Arbitrator is satisfied that the grievor's work record over the period examined did justify the assessment of some discipline. The grievor is, however, an employee of twenty years' service who had never previously been assessed discipline

for this infraction. It is true, as stressed by the Company's representative, that in February of 2001 the employer had waived an earlier investigation for the same infraction. That event clearly confirms that Mr. Zalkowsky had been on notice of the possibility of discipline should his rate of attendance at work not improve. In all of the circumstances I am satisfied that the assessment of ten demerits would have been appropriate in the circumstances, and the Arbitrator therefore directs that the grievor's record be adjusted accordingly.

November 19, 2002

(signed) MICHEL G. PICHER
ARBITRATOR