

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3307**

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 24, 2001 to September 9, 2001."

**JOINT STATEMENT OF ISSUE:**

On April 9, 2002, Locomotive Engineer Zalkowsky appeared at a Company investigation in connection with alleged work record irregularities between July 24, 2001 and September 9, 2001. Subsequent to the investigation, the grievor was assessed nineteen (19) demerits to his personal record.

The Brotherhood 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**

In the Arbitrator's view the assessment of nineteen demerits in the case at hand is excessive. I am satisfied that certain of the events which the Company viewed as deserving of discipline in fact involved occasions when the grievor, by reason of personal stress, properly judged himself unfit to work. I come to that conclusion in light of the fact that shortly after these events Mr. Zalkowsky was required to go on an extended leave of absence for stress, under the care of his physician from September of 2001 to March of 2002. It remains, however, that there was one occasion where the grievor, in the Arbitrator's view, did improperly refuse a call to work when there was a change in the time of the train for which he expected to be called, based on line-up information. In the circumstances, having regard to the grievor's prior record, I am satisfied that the assessment of ten demerits would have been appropriate for the infraction in question. The Arbitrator therefore directs that the grievor's record be amended accordingly.

November 19, 2002

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**