

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3312**

Heard in Montreal, Wednesday, 11 December 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE**

DISPUTE:

Appeal the discipline assessed Locomotive Engineer R.W. Tucker of Winnipeg, MB, for "disrespect and insubordination to a Company officer while working as a locomotive engineer on train Q11851-03 at Symington Diesel Shop on 2002 June 05 at approximately 20:45".

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood contends that the Company has not demonstrated, as required and outlined in article 86, paragraph 86.1 of collective agreement 1.2, that Locomotive Engineer Tucker was culpable and responsible in any manner whatsoever with regard to the incident that took place on June 5, 2002 that would, in turn, give rise to any form of discipline.

The Brotherhood further contends that the discipline assessed in the instant case, that being a two (2) week suspension with seven (7) days counted and calculated as time served, with the remaining days held in abeyance for one hundred and eighty (180) days, unless another disciplinary issue occurred during that period, constitutes a form of double discipline, and therefore, must be considered patently unreasonable and contrary to the intent and provisions of the collective agreement.

The Brotherhood has requested that the discipline assessed be expunged and that the grievor be compensated for all wages and benefits lost during the period of suspension served.

The Company does not agree with the Brotherhood's position.

FOR THE BROTHERHOOD:
(SGD.) D. E. BRUMMUND

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. VanCauwenbergh - Manager, Human Resources, Winnipeg

J. Torchia - Director, Labour Relations, Edmonton

And on behalf of the Brotherhood:

D. E. Brummund - Sr. Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The Arbitrator is compelled to agree with the Brotherhood that the assessment of a two week suspension, even allowing for the deferral of the second seven days, is excessive in the circumstances. The facts giving rise to this discipline were reviewed to a substantial degree in **CROA 3282** and need not be repeated here. Suffice it to say that by reason of the questionable conduct of Conductor D.E. Atamanchuk the grievor's assignment had the appearance of being unduly delayed, causing Company officers to make enquiries of Mr. Atamanchuk and his locomotive engineer, Mr. Tucker.

It is common ground that the direct encounter between the two Company officers and Mr. Tucker was relatively brief, and took place outside the booking-in and locker room facility of the diesel shop, against the background of a locomotive engine which was revving at a high level. It appears that Mr. Tucker was prompted to approach the two officers at that point as he considered that they were being unfair in the way they were pursuing questions being put to Mr. Atamanchuk. It is not disputed that the grievor exhibited a degree of emotion, used profanity, albeit not directed at the officers themselves, and effectively refused to answer questions put to him by Company officers, turning his back and walking away when they clearly wished to speak further with him.

There is no dispute that there was a degree of insubordination displayed on the part of Mr. Tucker. He admits as much in his own investigation. The real issue is the appropriate measure of discipline in the circumstances. The Arbitrator considers it unnecessary to deal with the Brotherhood's submission that the assessing of a fourteen day suspension, with seven days to be served and seven days to be deferred for a period of six months, to be triggered in the event of any additional discipline incurred by Mr. Tucker, constitutes double jeopardy. I am satisfied that, in any event, a fourteen day suspension was excessive in the circumstances.

The grievor is an employee of twenty-nine years' service who has garnered a close to exemplary record. It appears that he was only disciplined once, in 1987, by reason of having missed calls. There is nothing in his record that would suggest any prior discipline for conduct similar to what occurred in the case at hand. In the Arbitrator's view in the circumstances the assessment of a three day suspension would have been ample to communicate to an employee of Mr. Tucker's length and quality of service that disrespect towards Company officers is unacceptable. I deem it appropriate to exercise my discretion under the **Canada Labour Code** to make the adjustment in penalty accordingly.

The grievance is therefore allowed, in part. The grievor's record shall be corrected to reflect a three day suspension for insubordination towards Company officers at Symington Diesel Shop on June 5, 2002. He shall be compensated for all wages and benefits lost relating to the difference between the adjusted three day suspension and the seven day suspension which he initially served.

December 13, 2002

MICHEL G. PICHER
ARBITRATOR