

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3330

Heard in Montreal, Wednesday, 9 April 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Appeal the discipline assessed the personal record of Locomotive Engineer R. Cerilli of Edmonton, AB, for "Violation of Edmonton Zone Operating Manual section 5, item 5.3, booking off on call on Oct. 20, 2001."

BROTHERHOOD'S STATEMENT OF ISSUE:

At 00:21 on October 20, 2001, Locomotive Engineer Cerilli, while occupying a position on the Edmonton locomotive engineers' spareboard, booked unfit for duty on call. The grievor had been told approximately two (2) hours previously, at approximately 22:00, on October 19, 2001, that he was nine (9) times out and consequently would not be required to perform service until later the next morning.

The Company held an investigation and subsequently assessed the grievor fifteen (15) demerits.

The Brotherhood contends that Locomotive Engineer Cerilli is the judge of his own condition and was within his rights to remove himself from the working board without fear of discipline from the Company.

The Brotherhood submits that the discipline assessed is unreasonable under the circumstances and must therefore be expunged.

The Company disagrees with the Brotherhood's position.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

S. Blackmore - Manager, Human Resources, Edmonton
R. Reny - Sr. Manager, Human Resources, Vancouver
D. VanCauwenbergh - Manager, Human Resources, Winnipeg

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that Locomotive Engineer R. Cerilli of Edmonton did book himself off when called for work on October 20, 2001. The Company maintains that his failure either to book rest previously, or to obtain the rest necessary to protect his work, led to a failure of his obligation to the Company deserving of discipline. Although he was initially assessed fifteen demerits, that penalty was reduced to a written reprimand on February 24, 2003. The position of the Brotherhood is that no discipline whatsoever should attach in the circumstances.

The facts are not in substantial dispute. Mr. Cerilli went off duty in Edmonton at 08:30 on Friday, October 19, 2001. As an employee on the locomotive engineers' spareboard he then had to assess the probability of the time of his next call to work. Based on the train line up and the position which he would assume on the spareboard Mr. Cerilli estimated that he would not be called to work much before the morning or mid-day of the next day, Saturday, October 20, 2001. It is also common ground that he could, at that point, have booked rest for any amount of time less than 24 hours, for example for 23 hours, without jeopardizing his call position on the spareboard. For reasons he bests appreciates, however, Mr. Cerilli did not book rest, thereby indicating to the Company that he was available for a call when his turn would come. The Brotherhood's representative relates that he then determined that he was approximately thirteen times out on the spareboard. That fact, coupled with the assignments expected over the next twenty-four hours, led him to conclude that he need not book rest, and that he would have sufficient time to go home and get enough sleep to be prepared for his call to work.

There is some dispute between the parties as to what further information Mr. Cerilli may have obtained with respect to his status on the spareboard. The Brotherhood maintains that he verified his status in the CATS system from home at or about 22:00 on the 19th, and that he was then nine times out. The Company disputes the accuracy of that assertion. Firstly the Company notes that Friday is a regular board change day. It appears that at or about 13:00 hours on that day employees could be moved from one board to another, others could start vacations or other factors could alter the status of the spareboard. Additionally, based on the line-up information retrieved from the Company's records, it asserts that at 22:00 the grievor would have been showing as four times out and third available, leaving every reasonable expectation that he was soon liable to be called to work.

The Brotherhood's representative submits that the grievor must be the judge of his own fitness to work, and should not be made the subject of discipline for effectively recognizing that he was too tired to take the call which he eventually did receive at 00:21 on Saturday, October 20, 2001. He stresses that Mr. Cerilli took a short nap in the afternoon, not wishing to sleep excessively so that he could sleep properly through the night, in anticipation of being called to work later in the morning or the afternoon of Saturday, October 20th. He obviously was wrong in his calculation of where he would stand on the spareboard.

However, the Brotherhood submits that he should not be disciplined for what occurred.

This Office well recognizes the importance of running trades employees being rested and fit for work when called (see, generally, **CROA 1854, 2248, 2791, 3232**). Additionally, the jurisprudence confirms that where mitigating factors confirm the inability of running trades employees to obtain the necessary rest they are not to be disciplined for exercising their right decline to accept a call to work (see **CROA 1759**).

As in any case of discipline, it is clear from the above cited awards that each case must be determined on its own facts. In the case at hand it is significant, in the Arbitrator's view, that Mr. Cerilli was a spareboard employee. In that capacity he knew, or reasonably should have known, that a certain degree of unpredictability and volatility can operate in the movement of a spareboard, particularly on a Friday as occurred in the case at hand. In deciding whether or not to book rest, thereby protecting his ability to avoid being called for as much as twenty-three hours from the time he booked off, Mr. Cerilli made a judgement for which he must bear the responsibility. In essence, by not booking rest he held out to the Company that he was available for a call at any time after 08:30 on Friday, October 19, 2001. While he could obviously expect to be called considerably later, by the normal progression of the spareboard, he also knew that unpredictable factors, such as employees booking sick or extra assignments being required, could accelerate his movement up the board. On the whole, the Arbitrator can find no circumstances which could fairly be characterized as mitigating in the circumstances of the case at hand. It is clear that the Company did provide accurate line-up information through the CATS system at all material times. In the circumstances I am satisfied that there are no compelling mitigating factors, and that the grievor did make himself liable to discipline for failing to accept the call to work at 00:21 on October 20, 2001.

The issue then becomes the appropriate measure of discipline. It is true, as the Brotherhood's representative notes, that this appears to be the first infraction of its kind on the grievor's record. By the same token, Mr. Cerilli's disciplinary record cannot be characterized as that of an exemplary employee. In all of the circumstances, given the relatively light degree of discipline involved, the Arbitrator is satisfied that the assessment of a written reprimand was not inappropriate in the circumstances.

For all of the foregoing reasons the grievance must be dismissed.

April 11, 2003

(signed) MICHEL G. PICHER
ARBITRATOR