

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3353**

Heard in Edmonton, Wednesday, 9 July 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal the discipline assessed the personal record of Locomotive Engineer E.W. Bugoy of Melville, SK that resulted in the discharge of the grievor on July 3, 2002.

JOINT STATEMENT OF ISSUE:

On May 30, 2002, and then on June 20, 2002, the Company conducted investigations in regards to Locomotive Engineer Bugoy's work record for the months of April and May 2002. The Company subsequently assessed the grievor twenty-five (25) demerits that culminated in his dismissal on July 3, 2002.

The Brotherhood submits that the Company has not proven that the grievor was responsible for actions that led to the assessment of discipline in the instant matter.

In addition, the Brotherhood contends that Locomotive Engineer Bugoy did not receive a fair and impartial hearing that is mandated under the provisions of article 86 of collective agreement 1.2.

Accordingly, the Brotherhood requests that the Company be directed to expunge the discipline imposed and, further, the grievor be reinstated into employment and that he be made whole for all wages and benefits lost during the period of dismissal.

The Company has denied the Brotherhood's request.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) D. E. BRUMMUND (SGD.) D. VANCAUWENBURGH

FOR: GENERAL CHAIRMAN FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenburgh – Manager, Human Resources, Winnipeg

S. M. Blackmore – Manager, Human Resources, Edmonton

R. Reny – Senior Manager, Human Resources, Vancouver

S. Crick – Transportation Supervisor, Winnipeg

And on behalf of the Brotherhood:

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

B. Willows – Vice-General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

This award consolidates the grievances filed under **CROA 3351**, **CROA 3352** and the instant case.

The first matter concerns the assessment of a thirty day suspension against the grievor as a result of a number of complaints from fellow employees with respect to the grievor's body odour and deficiencies in his personal hygiene. The material before the Arbitrator confirms, beyond conflict, that in fact a number of employees indicated to the Company that they refused to work with Mr. Bugoy by reason of his personal body odour. Given that running trades employees sometimes travel extensive distances in the confines of a taxi, as well as in the cab of a locomotive, the issue of body odour is not insignificant.

The record before the Arbitrator confirms that on prior occasions the grievor had been counselled, and on at least one occasion had been given a written reprimand, in November of 1999, because of his personal hygiene. Within a period of some four months of that discipline further complaints by a number of employees, some of whom refused to work with the grievor, occasioned disruptions to the Company's operations and resulted in the assessment of a thirty day suspension against Mr. Bugoy on August 3, 2000.

Among the objections taken by the Brotherhood is the allegation that the grievor was denied a fair and impartial investigation. The Arbitrator cannot agree. The Brotherhood's argument is based on the involvement of Assistant Superintendent James P. Mitton as the investigating officer, where Mr. Mitten had himself had occasion to be the recipient of employee complaints regarding the grievor's hygiene problems. In the Arbitrator's view that, of itself, does not violate the standard of a fair and impartial investigation. Nor I am satisfied that the grievor did not have adequate notice of the disciplinary investigation. Additionally, the suggestion that the Company failed to have certain complaining employees in attendance at the investigation is not of itself a basis for concluding that the Company did not conduct a fair and impartial investigation, as there was no specific demand to that effect made by the grievor or his Brotherhood representative. Finally, I am satisfied that the use of reference to prior records in the grievor's file during the course of the investigation did not place him at an unfair disadvantage. Therefore, the Brotherhood's objection with respect to the fairness of the investigation cannot be sustained.

The second head of discipline against the grievor relates to his failure to appear for disciplinary examinations scheduled with respect to the complaints of employees concerning his personal hygiene. He failed to appear in response to notices served upon him for investigative hearings scheduled on April 7, 11, 25, 28, May 23, June 5 and 15, 2000. When he was finally sent a registered letter indicating that he would be suspended should he fail to attend the next scheduled investigation he did appear on July 10, 2000. He was then convened to an investigation on July 17, 2000 respecting his failure to appear at the above noted investigations. As result of that investigation Mr. Bugoy was assessed 15 demerits. That discipline raised his record from forty demerits to fifty-five.

The third head of discipline involved the assessment of twenty-five demerits against the grievor for a poor work record recorded in the months of April and May of 2002, resulting in his dismissal on July 3, 2002.

The material before the Arbitrator reveals that the grievor has an extensive record of counselling for his failure to maintain acceptable attendance standards since early 2000. Incidents included frequently booking unfit and missing calls. On June 28, 2001, when the grievor's record already stood at fifty-five demerits, he was assessed a written reprimand for an extensive series of missed calls and absences in the period between October 1, 2000 and June 22, 2001.

Notwithstanding that record, the material before the Arbitrator confirms that at an investigation convened on May 30, 2002 Mr. Bugoy was found to have recorded missed calls on three occasions in April and seven times in May. Notwithstanding that his record then stood at fifty-five demerits, the Company concluded that it had little alternative but to assess significant discipline, which resulted in twenty-five demerits, and his dismissal for the accumulation of a total of eighty demerits.

In the Arbitrator's view the grievor was deserving of discipline in all three matters reviewed above. He has been repeatedly counselled with respect to the need to observe a satisfactory attendance record. He clearly failed, on a repeated basis, to make himself available to attend at the disciplinary investigation which the Company repeatedly sought to schedule with respect to his alleged problems of personal hygiene and he plainly did, in light of the numerous complaints contained in the materials concerning that investigation, fail to maintain an adequate degree of personal hygiene so as to cause other employees to refuse to work with him, occasioning disruption to the Company's operations.

The Arbitrator is satisfied that the grievor made himself liable to a serious degree of discipline, up to and including discharge. There is little in the way of mitigating circumstances, save one. The grievor is a long service employee, who first entered the service of the Company in 1974. It would appear that for a substantial number of years he was able to maintain an acceptable standard of hygiene and keep an acceptable work and attendance record. On that basis the Arbitrator is satisfied that there should be a last chance accorded to the grievor, subject to certain clear conditions surrounding his reinstatement, a reinstatement which should be without compensation for any wages and benefits lost.

The Arbitrator therefore directs that the grievor be reinstated into his employment, without loss of seniority and without compensation for wages and benefits. His disciplinary record shall stand at fifty-five demerits, with five demerits attributed to his failure to attend at the scheduled investigations and a further ten demerits for his work record for the months of April and May 2002. The grievor's reinstatement shall be conditional upon his undertaking a program of improvement in his personal hygiene. To that end he shall agree to attend for personal counselling through the EFAP or with such other counsellor as may be agreed between the parties, on a monthly basis for the period of one year from the date of his reinstatement. Any failure on the part of the grievor to abide by that condition, and any substantiated complaint with respect to his failing to maintain a satisfactory level of personal hygiene over the same period, shall render him liable to termination. Further, should he fail to maintain an attendance record equal to the average of the employees of his bargaining unit at his terminal, measured on a quarterly basis, he shall likewise be subject to termination.

July 14, 2003

(signed) MICHEL G. PICHER
ARBITRATOR