

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 207

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### DISPUTE:

Request of removal of 20 demerit marks assessed against the record of Engineer D.M. McNaughton account failure to comply with Chief Dispatcher's instructions by taking himself off duty when booking rest without proper authority at Radville, Saskatchewan on December 2, 1968.

### JOINT STATEMENT OF ISSUE:

On December 2, 1968, Engineer McNaughton was ordered in unassigned freight service with instructions to operate from Regina to Goodwater through Radville and return to Radville to tie-up. In accordance with his interpretation of Article 6.1(a) of the Collective Agreement, Engineer McNaughton booked six hours rest shortly after his arrival at Radville.

After conducting an investigation, Engineer McNaughton was assessed 20 demerit marks for failure to carry out instructions of the Chief Dispatcher by releasing himself from duty when booking rest without authority.

The Brotherhood requested the removal of this discipline. The Company declined the request.

### **FOR THE EMPLOYEES:**

**(SGD.) L. O. HEMMINGSON**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) K. L. CRUMP**  
**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

M. A. Cocquyt	– System Labour Relations Officer, Montreal
C. F. Wilson	– Labour Relations Assistant, Montreal
W. S. Mason	– Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

L. O. Hemmingson	– General Chairman, Winnipeg
D. E. McAvoy	– General Chairman, Montreal

### **AWARD OF THE ARBITRATOR**

Article 6.1(a) of the collective agreement, relied on by the union, is as follows:

**6.1 (a)** Engineers will not be required to leave home terminal until they have had at least eight (8) hours' rest if requested, such rest must be entered when booking in on register, must be in even hours and may not be changed or cancelled. When an engineer books rest at his home terminal, it must be for not less than six (6) hours. At other terminals engineers will be allowed six (6) hours' rest if requested.

Engineers will not be permitted to book more than 24 hours rest. Spare or Pool engineers who book more than 16 hours rest will have their names placed at the bottom of their respective working list after the period of rest booked has expired.

Engineer McNaughton's instructions were to proceed from his home terminal of Regina to Goodwater through Radville and return to Radville. Radville is one of the terminals in the Saskatchewan district, and is listed as such in article 6.52. Certainly when Engineer McNaughton completed his assignment by returning to Radville after having proceeded to Goodwater, he was entitled to book rest. He was at the terminal then, within the meaning of article 6.1(a)

Engineer McNaughton did not book rest in that manner, however. He booked rest at Radville although he had not completed his assignment, and had not arrived at that terminal as his destination, but was merely passing through it en route. Now of course rest may be taken even though an assignment is not completed; the interests of safety, as well as ordinary human requirements may make rest necessary, and booking rest while on the road is specifically provided for in article 6.1 (b), which is, in part, as follows:

**6.1 (b)** Engineers may book rest after 12 or more hours on duty by giving the dispatcher at least one hour's notice along with the number of hours of rest desired. If dispatcher will provide a satisfactory run to the destination point, arrangements may be made to continue trip. The engineer to be the judge of his own condition.

It seems clear that the assignment given to Engineer McNaughton was a proper one, and that the trip Regina–Radville–Goodwater–Radville constituted one continuous tour of duty. The contrary seems not to be explicitly contended by the union, although it may be implicit in a claim based on an alleged right to book rest after proceeding from Regina to Radville. A number of cases decided in the Canadian Railway Office of Arbitration make it plain that the trip was not concluded when Engineer McNaughton first reached Radville. In the circumstances of this case, Engineer McNaughton was not “at the terminal” of Radville within the meaning of article 6.1 (a) until he arrived there upon the completion of his trip, that is, upon his return from Goodwater. Until that time he was “on the road”, and would be entitled to book rest under article 6.1 (b).

It is my conclusion therefore that Engineer McNaughton behaved improperly when he ignored his instructions and took himself off duty at Radville when he ought to have moved through that point and completed his assignment subject to the exercise of any rights under article 6.1(b). In the circumstances, it appears that this was done as a consciously formulated assertion of right, and as such was subject to the risk of discipline. I do not find it necessary to make any determination whether, in this case, discipline for failure to follow instructions would have been proper, even if the instructions themselves had been improper. That is a matter which has been dealt with in a number of other cases, and, while it is true as a general principle that the proper course in such cases is for the employee to comply with the instructions and then file a grievance, it is not necessary to dwell on the matter here.

For the foregoing reasons, it is my conclusion that discipline was properly imposed, and the grievance must therefore be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**