

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 296

Heard at Montreal, Tuesday, September 14th, 1971

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Assessment of 35 demerit marks against the record of Engineman E.A. Knuff, effective December 18, 1970 for refusing duty by booking unfit.

JOINT STATEMENT OF ISSUE:

On December 16, 1970, Engineman E.A. Knuff was assigned to the Engineers' Auxiliary Spare Board at the Fort St. John, B.C. terminal of the Pacific Great Eastern Railway.

At 0910, December 16, 1970, Engineman Knuff received advice that he would be required that day for relief duty on a work train located at "end of steel" on a construction project extending northward from Fort St. John.

Engineman Knuff advised the Terminal Supervisor that he would not go to the end of steel and requested that he be booked unfit for duty.

Following an investigation, the record of Engineman Knuff was assessed 35 demerit marks for refusing duty by booking unfit.

The Brotherhood has requested removal of the discipline.

FOR THE EMPLOYEES:

(SGD.) K. G. MASON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. C. NORRIS
REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond – Chief Industrial Relations Officer, Vancouver
H. Collins – Supervisor Labour Relations, Vancouver

And on behalf of the Brotherhood:

R. E. Morgan – Recording Secretary, Subdivision 105, North Vancouver & Squamish
K. G. Mason – General Chairman, Williams Lake

AWARD OF THE ARBITRATOR

On December 16, 1970, the grievor was first out on the Auxiliary Spare Board at Fort St. John. He was called that day and requested to travel deadhead to the end of steel where he would commence work the next day. This was a perfectly proper request, and indeed if the grievor had not been called he would likely have had a valid grievance. The grievor refused the call, and asked that he be booked unfit for duty. He was not in fact unfit, and it is clear from the material before me that he did not consider himself unfit for duty in any usual sense of the term. He simply did not want to work at the end of steel. This is quite clear from the grievor's own statement, which was that on his last tour of duty at the end of steel the company had not provided transportation for his return to Fort St. John, and that this was the reason for his refusal to go to the end of steel.

In effect, the grievor simply refused to perform a particular assignment which it was his turn to accept. He did not accept it because, as he stated, satisfactory arrangements for his return transport had not been made on the last occasion when he had performed the assignment. Now there is no issue before me in this case as to the obligations of the company with respect to transportation of employees from the end of steel to Fort St. John. If the company is under any obligation to spare board employees in this regard, then the obligation, if it arises under the collective agreement, may be enforced through the grievance procedure. Nothing in the material before me indicates any thought of resource to the grievance procedure on the grievor's part, but in any event it is clear that in a situation of this sort, it would be up to the grievor to seek his remedy in that way, and that it was quite improper for him to seek simply to opt out of the work which he found less desirable, and to leave it to the next man on the list.

In seeking to book off sick, the grievor was abusing the booking-off privilege which employees are entitled to under the collective agreement. By article 28(a) an engineer "being physically unfit for duty" is to report the same on the report book, so that he will not be called. The grievor made no such report, and was not in fact physically unfit for duty. He simply sought to use the booking-off procedure as a colourable device for avoiding a duty which he found not to his liking. It is quite clear from the material before me that this is not a case in which any proper justification existed for a refusal to accept duty. Much of the union's argument in this case was directed to what were said to be the difficult conditions of work at the end of steel, and to the likelihood of the grievor's in fact being unfit to carry on such work. In a proper case, of course, such arguments might prevail. In the instant case, however, what is important is the grievor's sole stated reason for his refusal to accept a particular assignment, and it is clear from this that he was, in the circumstances, seeking to use the booking-off procedure improperly. What he was really doing was refusing to accept a proper assignment, because he did not like certain of its conditions. Whatever grievance he may have had, he was not entitled simply to refuse the assignment, nor to attempt to use the booking off procedure in this way.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR