

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 349

Heard at Montreal, Tuesday, April 11th, 1972

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The Company's refusal to remove the unwarranted ten (10) demerit marks assessed against the record of engineer R.T. Clarkson, for failure to report for duty after accepting call by booking unfit October 6th.

BROTHERHOOD'S STATEMENT OF ISSUE:

On October 6th, 1971, engineer R.T. Clarkson received a call at 19:04 hours to commence work as a unit with train crew at 21:00 hours, requiring engineer Clarkson to appear on duty for inspection purposes at 20:50.

Engineer Clarkson, who has been under Doctor's care throughout the year of 1971 for treatment of migraine headaches, encountered one of his severe headaches while enroute from his residence to his point of appearing on duty and realizing his inability to properly perform his duties, Booked Unfit, in compliance with the requirements of Article 28 of his current Collective Agreement.

Following an investigation, engineer Clarkson's record was assessed ten (10) demerit marks for "failure to report for duty after accepting call by booking unfit October 6th".

The Brotherhood has requested removal of the unwarranted discipline. The Company has denied the request.

FOR THE EMPLOYEES:

(SGD.) K. G. MASON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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

And on behalf of the Brotherhood:

K. G. Mason – General Chairman, Williams Lake

AWARD OF THE ARBITRATOR

The grievor was on the Engineers' Guaranteed Auxiliary Spare Board at the Company's North Vancouver terminal. At 07:00 on the morning of October 6, 1971, he completed a tour of duty as yard engineer. On going off duty, he indicated that he would require eight hours, rest and a two-hour call before accepting another call for duty. He was called at 19:04 that evening to report for duty at 2100 on an extra yard assignment. Under the collective agreement this would require him to appear at 20:50. He called the crew dispatcher at 20:43 to "book unfit" for the assignment. As a result, the company had, at the last minute, to find someone to take his place, and the assignment was delayed by about an hour and a half.

The Union referred to Article 28(a) of the collective agreement, which provides as follows:

Booking Off:

An engineer being physically unfit for duty will report same on report book, so that he may not be called. When he reports for duty he will go out on his assigned run or in his turn.

This provision, in my view, has no application in the instant case. It imposes an obligation on employees who are physically unfit to report the same, so as to avoid the necessity of their being called. The grievor was not unfit at the time he was called. Subsequently, shortly before he was due to appear at work, he advised the Company that he was ill. Whatever category one might seek to apply to this advice, it did not come within the contemplation of Article 28.

The issue, however, is as to the discipline imposed. As to that the onus is on the Company to establish that there was just cause for the imposition of discipline. In this case, where the Company shows, as it has, that the grievor, having accepted a call to work, telephones at the last minute to say he will not be in, obviously some explanation is called for. If a satisfactory explanation is not provided, then discipline may properly be imposed. Illness which would prevent an employee from properly carrying out his duties would be a satisfactory explanation. It is not necessary that there be any provisions in the collective agreement relating to that.

In the instant case, the grievor was quite properly called to an investigation to ascertain the reason why he did not report on the night in question after accepting the call. He stated simply that he had had a migraine headache which had been quite severe. It was said at the hearing of this matter that the headache developed after the grievor had accepted the call, that he had in fact left for work, but stopped along the way to telephone in, since the headache had become severe. In corroboration of the grievor's statement, there was submitted (at the hearing of this matter) a doctor's certificate stating that the grievor had been under care for migraine headaches; throughout 1971, that he required frequent medication and was frequently disabled for a day at a time. The grievor's earnings record, however, does not suggest any very frequent absences from work.

The grievor was required to explain his failure to report. He gave an explanation which, if true, would justify that failure. He was then disciplined. That is, the Company must have considered either that his explanation could not in any case justify failure to report, or that it was untrue. As I have said, the explanation, if true, would justify the failure to report. The only question, then, is whether it was true or not. In the circumstances, one could well understand the Company's taking a skeptical view of the matter, and requiring the grievor to produce some corroboration of his explanation. It did not do so. It simply took the grievor's statement and then imposed discipline. Since, on the material before me, there is nothing to support the conclusion that the grievor's statement was wrong, it can only be concluded that the Company has not met the onus of showing that just cause for discipline existed.

For the foregoing reasons, the grievance must be allowed. It is my award that the demerit marks be removed from the grievor's record.

(signed) J. F. W. WEATHERILL
ARBITRATOR