

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1328

Heard at Montreal, Tuesday, February 12, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed Locomotive Engineer C. W. Cooper of Kamloops, B.C., effective September 13, 1983.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer C. W. Cooper's personal record was assessed with 40 demerit marks effective September 13, 1983, for:

Violation of Rule 292 Uniform Code of Operating Rules (Revision of 1962) at Signal 735 Spences Bridge, Ashcroft Subdivision and subsequent violation of UCO Rule 517 while employed as Locomotive Engineer on Extra 5339 West, September 13, 1983.

The Brotherhood has appealed the discipline on the grounds that the Company violated paragraph 86.1 of article 86, agreement 1.2 as Locomotive Engineer Cooper was not provided with written notification within 20 days from the date the investigation was held. The discipline assessed should therefore be removed from Locomotive Engineer Cooper's record.

The Company has declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) J. W. KONKIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

G. Blundell – Labour Relations Officer, Montreal
M. Healey – Manager Labour Relations, Montreal
J. A. Sebesta – Coordinator Transportation, Montreal

And on behalf of the Brotherhood:

J. W. Konkin – General Chairman, Winnipeg
G. N. Wynne – General Chairman, Montreal
G. Thibodeau – General Chairman, Quebec

AWARD OF THE ARBITRATOR

This case is unfortunate from the Company's perspective because it has misunderstood the Trade Union's complaint. What is not in issue is the notion that the twenty day time limit commences to run, for the purposes of the imposition of discipline, upon the completion of an appropriate and full investigation. In other words the Company is entitled to interview all relevant witnesses to an alleged employee infraction before that time limit begins to run.

The Trade Union's complaint, however, is that the Company failed, for reasons that were not contradicted in the evidence, to extend the grievor and his appointed Trade Union representative of notice of the meetings at which the other witnesses were called to adduce evidence relating to the grievor's alleged wrongdoing. As a result, they were denied the opportunity to participate in the investigation and to provide rebuttal evidence. Accordingly, the Company's actions were clearly in violation of the "fairness" requirement of article 86.1 of agreement 1.2.

86.1 A Locomotive Engineer will not be disciplined or dismissed without having had a fair and impartial hearing and his responsibility established and shall be advised in writing of the decision within 20 days from the date the investigation is held, except as otherwise mutually agreed.

The Trade Union submitted that because of the Company's failure to follow the procedural requirements of the collective agreement (see article 86.4), the "hearing" was completed after the grievor was interviewed. At that juncture the Company ceased to be fair and accordingly anything that occurred thereafter did not constitute an appropriate investigation. Accordingly, it is argued that the twenty day time limit should begin to run from the moment the Company ceased to hold a proper investigation.

Based on the uncontradicted evidence, I am satisfied, because of the unrefuted allegations, that the Company's imposition of 40 demerit marks ought to be treated as a nullity. Because the said discipline assessed is of no legal force or effect, any attempt to enforce a disciplinary penalty would be outside the time limits imposed by article 86 of the collective agreement. Accordingly, this grievance succeeds but without prejudice to the Company taking appropriate action with respect to discipline at a future date.

In the interim the 40 demerit marks are to be expunged from the grievor's record.

(signed) DAVID H. KATES
ARBITRATOR