

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1658

Heard at Montreal, Tuesday, June 9, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Imposition of 35 demerit marks on Locomotive Engineer B.R. Theriault, Edmunston, N.B.

STATEMENT OF ISSUE BY THE BROTHERHOOD:

On May 15 and 16, 1986, B. R. Theriault was employed on work extra 3626, on the Monk Subdivision. Following a work accident that resulted in an internal investigation by the Company, Mr. Theriault was assessed 35 demerit marks for conduct unbecoming an employee and the violation of Section 19, Item 19.1, paragraph 2, page 152 of Form 696, which resulted in his dismissal for having accumulated too many demerit marks.

The Brotherhood appealed the disciplinary measure, since the accusation of conduct unbecoming an employee against Mr. Theriault on May 15, 1986 was unjustified, and since Form 3903 was filled out on May 27, while Mr. Theriault was in a state of shock (concussion) and under medication, and is therefore inadmissible evidence.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) GILLES HALLÉ
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| D. C. St-Cyr | – System labour Relations Officer, Montreal |
| D. W. Coughlin | – Manager Labour Relations, Montreal |
| D. Lord | – System Labour Relations Officer, Montreal |
| M. C. Darby | – Co-ordinator Transportation – Special Projects, Montreal |
| F. V. Moran | – Trainmaster, Edmunston |
| I. Lakatos | – Witness |
| V. Lakatos | – Witness |

And on behalf of the Brotherhood:

| | |
|-----------------|----------------------------|
| G. Hallé | – General Chairman, Quebec |
| B. R. Theriault | – Grievor |

AWARD OF THE ARBITRATOR

After careful consideration, the Arbitrator must conclude that the statement of Mrs. Isabelle Lakatos concerning the incidents of May 15, 1986 is an accurate description of Mr. Theriault's actions. There is no doubt, then, that he was guilty of conduct unbecoming an employee that calls for severe disciplinary measures.

The evidence also shows that the grievor later knowingly and persistently made false statements to the Company to conceal his conduct of May 15, 1986. He also gave a false version of the cause of an injury brought on by his own conduct, and for which he claimed indemnity. In view of his disciplinary file, the Arbitrator sees no reason for assessing less than the 30 demerit marks assigned by the Company. For these reasons, the grievance is denied.

(signed) MICHEL G. PICHER
ARBITRATOR