

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1730

Heard at Montreal, Wednesday December 9, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer J.M. Robb of Thornton Yard, British Columbia on 22 April 1985.

JOINT STATEMENT OF ISSUE:

On 21 April 1985, Locomotive Engineer J.M. Robb was working the 2359 hours transfer assignment at Thornton Yard. Prior to completing his tour of duty, Locomotive Engineer Robb was instructed to take his locomotive consist to the shop track. Locomotive Engineer Robb refused to comply with this instruction alleging that it was unsafe to do so until he had the opportunity to have a cup of coffee.

Locomotive Engineer Robb was then released from duty.

Following an investigation into the incident, the personal record of Locomotive Engineer J.M. Robb was assessed 20 demerit marks: "For failure to follow the instructions from a Supervisor while working as a Locomotive Engineer at approximately 0910 P.S.T. April 22, 1985 at Thornton Yard, B.C."

It is the Brotherhood's contention that the discipline assessed was unwarranted and should be removed.

The Company does not agree.

FOR THE BROTHERHOOD:

(SGD.) P. SEAGRIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

L. A. Harms	– Labour Relations Officer, Montreal
J. R. Hnatiuk	– Manager Labour Relations, Montreal
K. G. Macdonald	– Manager Labour Relations
G. J. Stern	– General Yardmaster, Thornton Yard
M. C. Darby	– Co-Ordinator Transportation, Montreal
S. Grou	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

P. Seagris	– General Chairman, Winnipeg
G. Hallé	– General Chairman, Quebec
G. Love	– Local Chairman, Moncton

AWARD OF THE ARBITRATOR

A review of the material affirms that Locomotive Engineer Robb did work a relatively lengthy shift with only a short break for lunch. Because he felt tired he objected to doing a running switch of his caboose, a maneuver that requires some precision and timing. The Company appears to have acknowledged his condition in some degree, as the Yardmaster agreed to let him simply drop his caboose in the Surge Yard and proceed to the shop track with his locomotive. This, however, he declined to do.

The Arbitrator has some difficulty accepting that, in the conditions then apparent, with a clear track for the greater part of the distance to the shop track, the grievor could not comply with that request without undue risk to himself and his crew. While the danger of fatigue and the need for safety generally should not be minimized, on the material before me it appears that in refusing the second portion of his instruction, namely to put away his locomotive, the grievor's assertion about safety was more one of principle than of reality. By the same token, I am satisfied that his state of fatigue was a valid basis for the exercise of caution. In all of the circumstances, I am satisfied that the assessment of ten demerits would be a more appropriate disciplinary response. The grievor's record shall therefore be amended accordingly.

(signed) MICHEL G. PICHER
ARBITRATOR