

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1935

Heard at Montreal, Thursday, 13 July 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer C.G. Noseworthy of Edmonton, Alberta and his subsequent discharge for accumulation of demerit marks, effective December 13, 1988.

JOINT STATEMENT OF ISSUE:

On September 9, 1988, Locomotive Engineer Noseworthy was notified to appear for an employee statement on September 19, 1988 in connection with his alleged poor work record between July 20, 1988 and September 8, 1988. On September 18, 1988 the grievor advised the Company that he would not be able to appear on September 19, 1988.

The employee statement was rescheduled to commence on September 20, 1988, then on September 21, 1988. However, Locomotive Engineer Noseworthy failed to appear at his employee statement scheduled for September 21, 1988.

On November 1, 1988 the grievor provided an employee statement in connection with his failure to appear as scheduled on September 21, 1988. This investigation resulted in the assessment of twenty demerit marks to his disciplinary record.

On December 1, 1988 the grievor provided an employee statement in connection with his alleged poor work record between July 20, 1988 and September 8, 1988. This investigation resulted in the assessment of ten demerit marks to his disciplinary record.

These disciplinary measures resulted in the dismissal of Locomotive Engineer Noseworthy for accumulation of demerit marks in excess of sixty effective December 13, 1988.

The Brotherhood appealed the discipline on the grounds that: **1.)** Locomotive Engineer Noseworthy was unable to appear for the statement on September 21, 1988 due to advice from his doctor that he undergo medical examination on this date; **2.)** The arrangement to schedule the investigation on September 21, 1988 was informal and the Company therefore failed to properly advise the grievor in writing pursuant to paragraph 86.2 of Agreement 1.2; and **3.)** Locomotive Engineer Noseworthy's poor work record was attributable to work related stress for which he was under doctor's care and therefore the Company should reinstate the grievor and provide him support for this condition through the Employee Assistance Program.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD) P. SEAGRIS
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. R. Hnatiuk – Manager, Labour Relations, Montreal
K. G. Macdonald – Manager, Labour Relations, Edmonton
W. V. Stasiuk – Labour Relations Officer, Edmonton
K. H. McIntyre – Superintendent, Edmonton
A. Wingrave – Trainmaster, Kamloops
J. C. Johnstone – Manager, H.Y.I.P., Montreal

And on behalf of the Brotherhood:

D. S. Kipp – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

Having reviewed the entirety of the material filed, the Arbitrator finds that the Company has satisfied the burden of proof, and has established on the balance of probabilities that the demerit marks assessed in respect of Locomotive Engineer C.G. Noseworthy were merited in the circumstances. Given the grievor's poor work record, his clearly antagonistic attitude and the relatively slim medical documentary evidence filed to purportedly explain the grievor's behaviour, the Arbitrator is not persuaded that there are any compelling reasons to substitute a lesser penalty.

For these reasons the grievance must be dismissed.

July 14, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR