CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2165

Heard at Montreal, Wednesday, 10 July 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of 30 demerits assessed to the record of Locomotive Engineer C.W. Collings, Chapleau, Ontario, June 19, 1990.

JOINT STATEMENT OF ISSUE:

Upon reporting for duty for Train 955, Extra ex Cartier, on May 15, 1990, Engineer Collings separated two units from a 4 unit consist and commenced to work. He subsequently departed Cartier with these two units and a car of OCS groceries, destined for Drefal, on his train. Upon completion of this tour of duty, Engineer Collings submitted a wage ticket claiming a 4 unit rate and all time at Drefal as per Articles 7(a) and 1(c).

Subsequent investigation revealed that no work, as specified by Article 7(a), was performed at Drefal.

Following this investigation, Mr. Collings was assessed 30 demerits for misrepresenting information on his wage claim.

The Brotherhood contends that the discipline assessed was unwarranted and should be removed from Mr. Collings' record and that he should be compensated for wages lost as a result of being held out of service during the investigation.

The Company contends the discipline is appropriate and has declined the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) G. N. WYNNE	(SGD.) E. S. CAVANAUGH
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

G. W. McBurney	– Supervisor, Labour Relations, IFS, Toronto
B. P. Scott	– Labour Relations Officer, Montreal
R. P. Egan	– Assistant Supervisor, Labour Relations, IFS, Toronto
L. S. Wormsbecker	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

G. N. Wynne	– General Chairman, Smiths Falls
L. Vezina	– Local Chairman, Chapleau
G. Hallé	– General Chairman, CN Lines East, Quebec

AWARD OF THE ARBITRATOR

The first issue to be resolved is the merits of the Brotherhood's claim that the grievor was not deserving of discipline on account of the wage ticket which he submitted. The facts related in the material before the Arbitrator leave the Brotherhood's position in substantial doubt. Firstly, it is clear that although no unloading was done at

Drefal, Locomotive Engineer Collings made a claim for one hour and fifty-eight minutes for overtime unloading at Drefal.

It appears clear to the Arbitrator that the grievor had no right to make that claim, nor even any colour of right. The fact that he subsequently submitted a correcting ticket when he learned that his original ticket was being questioned does little to mitigate his conduct in filing a clearly unjustified and misleading trip ticket in the first place.

The second factual question relates to Mr. Collings' further claim of having operated or used four locomotives during his tour of duty on May 15, 1990. That claim is made under Article 1(c) of the collective agreement which is as follows:

> **1(c) Highest Unit Rating Paid**
>
> Where a different number of diesel units are used during a trip, or day's work, the rate applicable to the highest number of Units used by an engineer at any one time shall be paid for the entire day or trip.

The grievor's claim is that he was required to move two locomotive units into the clear prior to departing with the two units which he utilized during his trip. During the investigation he expressed his belief that he did so under the instruction of his conductor. This, however, was denied by Conductor Desbois, and no other witness interviewed during the course of the investigation could recall any need to push the two locomotive units into the clear. When confronted with the statements of Locomotive Engineer Donald Gionet and Conductor Robert Moores to the effect that their unit was not blocked or obstructed by other units, meaning that there would have been no need to push the two locomotives into the clear, Locomotive Engineer Collings responded "It appears to be a fact."

In light of the evidence the Arbitrator is compelled, on the balance of probabilities, to find that the claim for having used four diesel units during his trip cannot be based on the assertion that Mr. Collings moved the units in question in any way. I am satisfied that in fact he merely disconnected the two diesel units which he needed for his assignment, a movement which, the parties agree, would not justify a claim under Article 1(c) of the collective agreement. On the whole, therefore, the Arbitrator is satisfied that the Company has established two separate incorrect claims in the trip tickets submitted by Locomotive Engineer Collings for May 15, 1990.

The Brotherhood further protests the fact that the grievor's investigation was not held on his layover days, and that he was taken out of service during his investigation. In the Arbitrator's view if it could be shown that the claims made by Locomotive Engineer Collings appeared on their face to have been the product of inadvertence or negligence, the Brotherhood's position might be well founded. That, however, is not the case here. Article 19(e) provides as follows:

> **19(e)** An engineer is not to be held off unnecessarily in connection with an investigation. Layover time will be used as far as practicable. An engineer who is found blameless will be reimbursed for time lost in accordance with Article 5(e).

In the instant case it came to the employer's attention that Locomotive Engineer Collings made two wage claims on his trip ticket which were so highly doubtful as to call into question his good faith and raise an apprehension of sharp practice. The Arbitrator cannot accept the Brotherhood's submission that the Company was obligated, in those circumstances, to keep the grievor in service until such time as the facts were sufficiently clarified. The Company is entitled to know that locomotive engineers working unsupervised in its service can be fully relied upon to submit trip tickets with integrity and reliability.

In the result, the Arbitrator is satisfied that the grievor did, as alleged by the Company, misrepresent information on the trip ticket submitted for May 15, 1990. I am further persuaded, on the balance of probabilities, that he did so knowingly and without colourable excuse. Given the gravity of the conduct in question, the Arbitrator sees no reason to reduce the severity of the penalty assessed.

For the foregoing reasons the grievance must be dismissed.

July 13, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR