

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2388

Heard at Montreal, Wednesday, 15 September 1993

concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### EX PARTE

#### DISPUTE:

Dismissal of Locomotive Engineer R. G. Calver, Thunder Bay, Ontario.

#### BROTHERHOOD'S STATEMENT OF ISSUE:

Subsequent to an investigation held on December 14, 1992, in connection with run through switch L1RL in "L" Yard, the inter-city area of Thunder Bay Terminal, Thunder Bay December 10, 1992, Locomotive Engineer Calver was dismissed for:

failing to ensure that the switches connected with your movement were properly lined, resulting in a run through switch, for failing to properly protect the defective switch and for willfully conspiring to conceal the unsafe track condition, thereby knowingly causing a condition potentially hazardous to the public, other railways, and fellow employees; a violation of CROR General Notice, CROR General Rule A(ic), 1010(a), 104(d), (j), (k), 106(d), for CS44 General Operating Instructions, Section 7, Items 1.1 and 1.2, at Thunder Bay, Ontario, December 10, 1992.

The Brotherhood contends that Locomotive Engineer Calver's error in judgment was a one-time aberration of an otherwise long service and conscientious employee.

The Brotherhood further contends that, based on the investigation and the extreme personal stress and anxiety, the grievor's work and service record, that the dismissal of Locomotive Engineer Calver was not an appropriate disciplinary response.

The Company contends that Locomotive Engineer Calver's actions on December 10, 1992, were nothing short of reckless and cavalier, with a blatant and unmitigated disregard for the rules, leading to a serious compromising of the safety of his fellow employees and damage to Company equipment.

The Company declined the Brotherhood's request for reinstatement.

#### FOR THE BROTHERHOOD:

(SGD.) T. G. HUCKER

GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. E. Keiran

- Labour Relations Officer, Vancouver

B. P. Scott - Labour Relations Officer, Montreal  
M. G. DeGirolamo - Senior Manager, Industrial Relations, Montreal  
D. de Pelham - Assistant Chief of Transportation, HHC, Thunder Bay

And on behalf of the Brotherhood:

D. C. Curtis - General Chairman, Calgary  
T. G. Hucker - National Vice-President, Ottawa  
R. S. McKenna - General Chairman, CP Lines East, Ottawa  
J. Fraser - Local Chairman, Thunder Bay  
R. G. Calver - Grievor

### **AWARD OF THE ARBITRATOR**

Upon a careful review of the materials filed, including medical evidence in relation to the personal stress being suffered by the grievor at the time he violated the rules cited in the Statement of Issue, the Arbitrator is persuaded that a measure short of discharge is appropriate. By the same token, however, the Company is entitled to assurances that Mr. Calver will not again knowingly create a situation of danger or seek to conceal it in the manner reflected in the incident giving rise to his discharge.

I am satisfied that two conditions should attach to any reinstatement order in the case at hand. Firstly, the grievor should return to employment in a position other than as a locomotive engineer. Any subsequent promotion of Mr. Calver back to that rank should be a matter in the discretion of the Company. Secondly, Mr. Calver's reinstatement is conditioned upon the Company receiving a written opinion by a suitable medical specialist, to be chosen jointly by the parties, and failing their agreement to be named by the Arbitrator, confirming that his mental and emotional condition are suitable for his return to employment in a safety sensitive position. This matter may be spoken to further should the parties have any disagreement with respect to the implementation of the Arbitrator's award.

September 17, 1993

**(sgd.) MICHEL G. PICHER**  
**ARBITRATOR**