

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2411

Heard in Montreal, Tuesday, 9 November 1993

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

DISPUTE:

Reinstatement of Locomotive Engineer V. Moxness, Mactier, Ontario.

JOINT STATEMENT OF ISSUE:

On September 23, 1991, Locomotive Engineer V. Moxness attended an investigation with regard to irregularities in wage claims he had submitted for the period May 24 to August 31, 1991.

On October 24, 1991, Mr. Moxness was dismissed from Company service for "... fraudulent wage claims and for submitting false information on a wage claim resulting in your receiving wages which you were not entitled to, for claims submitted during the period May 24 to August 31, 1992."

The Brotherhood requested the reinstatement of Mr. Moxness, without compensation, on compassionate grounds based on his work record prior to the culminating incidents. They contend that his actions were as a consequence of personal problems encountered at that time.

The Company declined this request.

FOR THE BROTHERHOOD:

(SGD.) R. S. MCKENNA
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. B. CAMPBELL
GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

C. Bartley – Labour Relations Officer, IFS, Toronto
H. B. Butterworth – Assistant Manager, Labour Relations, IFS, Toronto
B. Scott – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. S. McKenna – General Chairman, Ottawa
T. G. Hucker – Vice-President, Ottawa
W. Foster – Local Chairman, London
V. Moxness – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor entered false data on trip tickets submitted over a period of several months in 1991. The material further establishes, however, that during the period in question Mr. Moxness, an employee of 20 years' service whose honesty and integrity has never before been in issue, was the subject of severe family and marital problems which caused him acute stress. During the course of the Company's investigation he disclosed that both a physician and a priest had recommended that he take a period of leave to deal with his stress, advice which he unfortunately declined.

A second mitigating factor involves the grievor's belief that, although he was knowingly reckless or indifferent in making out his trip sheets from memory, he believed that a computer system, such as one which he was familiar with in Chapleau, where he had worked for a time as an Assistant Superintendent, would "kick out" any incorrect information on the time claims which he submitted. In fact, however, the kind of computer system which he believed was in place was not operational at Mactier at the time in question. The Arbitrator accepts the submission of the Company that the fact that all of the discrepancies in the grievor's time claims worked to his advantage is an aggravating factor. However, his belief that any excessive claims would be caught by a computer must be given some mitigating weight in evaluating the grievor's state of mind at the time.

Having regard to the grievor's long service, and the mitigating factors disclosed in evidence, the Arbitrator is satisfied that the grievor's recklessness with respect to the submission of time claims, during a period of great personal stress, should not be viewed as having irrevocably severed the relationship of trust implicit in his employment as a locomotive engineer. This case, in my view, is to be distinguished from prior cases which have dealt with acts of calculated theft, such as **CROA 1835** and **2304**. For these reasons the grievance is allowed, in part.

The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation or benefits. His reinstatement shall be conditioned on the presentation of a written confirmation by his physician that he is not suffering from stress or emotional problems, and is able to fully undertake the responsibilities of a locomotive engineer.

12 November 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR