

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2508

Heard in Montreal, Wednesday, 13 July 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

DISPUTE:

Appeal the 45 day suspension assessed Locomotive Engineer R.J. Houston, Sarnia.

JOINT STATEMENT OF ISSUE:

On January 15, 1992, Mr. R.J. Houston was employed as the locomotive engineer on the 1600 Bunkhouse Utility operating within Sarnia Yard. During this tour of duty, Mr. Houston's train consist was involved in a switching accident and, as a result of this accident, a download of the event recorder of locomotive 1318 was performed.

On January 27, 1992, Mr. Houston was required to provide an employee statement in connection with the circumstances surrounding damage to cars UTPX 930013 and UTLX 80967 on January 15, 1992.

Following the investigation into this matter, Locomotive Engineer Houston was assessed 45 days' suspension for violation of C.R.O.R. 105 and General Operating Instructions Form 696, Item 6.9.

The Brotherhood contends that the discipline assessed Mr. Houston was unwarranted and raises the following points of contention in support of their appeal: **1.)** Mr. Houston was not properly notified in writing as to the subject matter. The investigation was not confined to the particular matter under investigation. (article 71.1 and 71.2) **2.)** The Brotherhood on several occasions requested a complete copy of the event recorder printout relating to the subject matter. The Company did not respond to this request, thereby depriving the Brotherhood of the ability to analyze, test or challenge the evidence. (article 71.2 and 71.6)

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. E. HEFT
for: VICE-PRESIDENT, GREAT LAKES REGIONS

There appeared on behalf of the Company:

A. E. Heft – Manager, Labour Relations, Toronto
C. Morgan – Labour Relations Officer, Toronto
J. Gussow – System Transportation Engineer, Montreal

And on behalf of the Brotherhood:

C. Hamilton – General Chairman, Toronto

AWARD OF THE ARBITRATOR

In the Arbitrator's view the evidence discloses, beyond any substantial doubt, that Locomotive Engineer Houston was involved in speeding violations during the course of his tour of duty on January 15, 1992. The substance of the dispute involves the submission of the Brotherhood to the effect that the grievor did not have adequate notice of the fact that the Company was investigating him for speeding violations, and the sufficiency of the documentation which was provided to him.

The Arbitrator cannot sustain the objections raised by the Brotherhood. The submissions before the Arbitrator confirm, without dispute, that Mr. Houston was initially called to an investigation on or about the 20th of January, 1992. At that time he was given to understand that the Company had concerns with certain alleged speeding violations, based on the downloaded data from an event recorder on his locomotive unit. At that time the grievor denied having operated the unit in question, which caused the Company to adjourn the investigation until January 27, 1992.

In the circumstances, while the concern of the Brotherhood might be valid had the investigation proceeded on January 20, 1992, I am satisfied that any deficiency in the initial notice given to the grievor was cured by the time the investigation was recommenced on January 27, 1992. I am also satisfied that the event recorder data provided to the grievor and his union representative at the time of the investigation was sufficient for the purposes of the inquiry being conducted, and was reasonably understandable to Mr. Houston and his representative. Indeed, there was no objection taken at the time of the investigation to the sufficiency or clarity of the data provided.

The record discloses that on at least two prior occasions Mr. Houston had been disciplined for speeding violations, the most recent being on December 17, 1990, which resulted in the assessment of twenty demerits. At the time of the incident in question the grievor's discipline record stood at thirty demerits. In all of the circumstances I am not persuaded that the assessment of a forty-five day suspension was inappropriate, or outside the range of reasonable discipline.

For the foregoing reasons the grievance must be dismissed.

15 July 1994

(signed) MICHEL G. PICHER
ARBITRATOR