

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2701

Heard in Montreal, Wednesday, 14 February 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

Discipline (25 demerits) and subsequent dismissal assessed D. Powers effective September 3, 1992 for falsifying a time claim.

EX PARTE STATEMENT OF ISSUE:

On September 3, 1992, the grievor was the conductor of Road Switcher 585. The Company alleged that the grievor submitted a fraudulent time return for his tour of duty on Train 585. Upon investigation, the Company determined that the grievor's actions warranted 25 demerits which led to his subsequent dismissal.

The Union appealed the severity of the discipline alleging that it was discriminatory. The Union argued that the grievor was misled by a senior employee into submitting extra time. No other London employees were disciplined to the same degree as the grievor for similar time claims.

The Union requested that the discipline be removed from the grievor's record and that he be instructed on the proper submission of time claims.

The Company has declined all appeal on this issue.

FOR THE COUNCIL:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

P. E. Marquis	– Labour Relations Officer, Toronto
R. E. Bateman	– Labour Relations Officer, Toronto
M. Stock	– Labour Relations Analyst, Toronto
N. Davies	– Manager, Train Service, Sarnia
B. Hamilton	– Manager, Train Service, Sarnia

And on behalf of the Council:

G. F. Binsfeld	– Secretary/Treasurer, GCA, Fort Erie
M. P. Gregotski	– General Chairperson, Fort Erie
G. B. Anderson	– Local Chairperson, London
D. Powers	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond any substantial doubt, that Mr. Powers knowingly and deliberately falsified a time claim in respect of his tour of duty on September 3, 1992. While it is not necessary to relate the details of that claim, suffice it to say that the Arbitrator is not persuaded by the explanations and assertions of mitigating circumstances advanced on behalf of Conductor Powers. The evidence discloses that he went off duty at 06:32 hours, when he faxed his switch list to the Customer Service Centre. However, the time sheet which he submitted showed an off duty time of 08:40 hours, a discrepancy in excess of two hours. The evidence reveals that he effectively made a false claim for the payment of wages totalling \$150.00. This included the overstatement of his on duty time, a claim for two hours and forty minutes overtime, a claim for forty minutes under article 51.8(b), which relates to on duty time in excess of ten hours, and a claim for four hours' extra payment for switching performed beyond the thirty mile radius from his point of departure, when in fact he did not proceed that distance.

At the time in question the grievor was an employee of little more than three years' service, with fifty-five demerits on his record. In his defence, the Council suggests that he might have been influenced by another, more senior employee of doubtful character. However, as an employee with the responsibility of a conductor, he was obviously not forced to originate a deliberately false time claim which, it appears, the other employee then copied.

In the circumstances the Arbitrator is satisfied that the bond of trust between employer and employee was breached by the grievor's actions and that he was deserving of a serious degree of discipline for the dishonesty which he exhibited. In light of his short service and extremely poor prior disciplinary record, reflected in the accumulation of fifty-five demerits, the Arbitrator cannot see any compelling basis to reduce the assessment of twenty-five demerits imposed by the Company. The grievance must therefore be dismissed.

February 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR