

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3050

Heard in Calgary, Wednesday, 12 May 1999

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the assessment of a Written Reprimand to C.B. Kostyshin for failure to complete his tour of duty on December 31, 1996.

JOINT STATEMENT OF ISSUE:

On December 31, 1996, Mr. C.B. Kostyshin was employed as a locomotive engineer assigned to work the 1500 Thornton Hostler assignment. At approximately 25 minutes into the grievor's tour of duty, he booked unfit as a result of an injury to his toe sustained earlier in the day.

As a result of an investigation held on January 10, 1997, the Company determined that the grievor booked unfit in response to a dispute over the nature of his work assignment.

The Council's position is that the discipline is unwarranted and requests the removal of the discipline.

The Company disagrees and had declined the appeal.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. RENY
FOR: SR. VICE-PRESIDENT – OPERATIONS

There appeared on behalf of the Company:

J. Dixon – Human Resources Business Partner, Vancouver

And on behalf of the Council:

D. J. Shewchuk – Vice-General Chairman, Saskatoon

O. Boyd – Local Chairman, Calgary

AWARD OF THE ARBITRATOR

In the case at hand the burden is upon the Company to establish that Locomotive Engineer Kostyshin booked off work for insufficient reasons. According to the Company's view, Mr. Kostyshin objected to performing certain work on the 1500 Thornton Hostler Assignment on December 31, 1996, and used the ostensible excuse of an injury to his foot to book off and leave work approximately 25 minutes into his tour of duty.

Upon a careful review of the record, however, it appears doubtful that the Company's case can be seen as proved, on the balance of probabilities. It appears that the Company's opinion was prompted by a report received from Assistant Superintendent J.A. Gosse. Mr. Gosse maintains that he received a telephone call from the Brotherhood's local chairman, Mr. R. Lee, during the course of the grievor's tour of duty, inquiring as to the legitimacy of a certain part of the assignment to be performed at Rawlison. Mr. Gosse relates that Mr. Lee gave him to believe that he had received a complaint in that regard from Locomotive Engineer Kostyshin.

The account of Mr. Lee, however, is entirely to the contrary. He states that he received a call of inquiry not from Mr. Kostyshin, but from Yard Conductor Bruce, who was working on the same crew as the grievor. According to his account such a call would not be uncommon, as it may have been impossible for the conductor to reach his own union representative. Mr. Lee relates his recollection that he simply told Mr. Gosse that the hostling crew had contacted him, and did not indicate that he had any specific complaint from Mr. Kostyshin. Indeed, he implicitly denies having received any call or complaint from the locomotive engineer at the time.

The grievor's account is that he injured his foot on the morning of December 31, 1996 while moving the effects of his tenants. It appears that the toe of his foot swelled, but that he nevertheless came to work in an effort to attempt to work through the injury. He relates that after having put on his work boots, shortly into the tour of duty, he felt that he could not continue, following which he booked off without apparent questioning or objection by the supervisor with whom he communicated his condition. The record reveals that the grievor subsequently sought medical attention for his injury, as evidenced by a doctor's note dated January 2, 1997.

On the whole of the material before me I cannot conclude that the Company has discharged the burden of establishing that Mr. Kostyshin either complained about the work assignment given to him or booked off under false pretences as a form of personal protest. While the Company may understandably have suspicions as to what transpired, I cannot conclude that the events confirm just cause for the assessment of a written reprimand in the circumstances disclosed.

The grievance is therefore allowed. The Arbitrator directs that the written reprimand be stricken from the record of Locomotive Engineer Kostyshin in relation to the events of December 31, 1996.

May 14, 1999

(signed) MICHEL G. PICHER

ARBITRATOR