

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3090

Heard in Montreal, Wednesday, 10 February 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the discharge of Locomotive Engineer G.L. Ager of Vancouver, B.C., effective September 20, 1999.

JOINT STATEMENT OF ISSUE:

Effective September 20, 1999 Locomotive Engineer G.L. Ager was discharged from his employment at Canadian National Railways for his alleged organization and participation in a concerted job action in the Greater Vancouver Terminal on August 4 and 5, 1999.

It is the Brotherhood's position that the Company has not satisfied or discharged their onus or responsibility to prove their allegations against Locomotive Engineer Ager for what the Company considers as organizing and participating in a concerted job action in the Greater Vancouver Terminal purported to be designed to intentionally restrict or limit railway operations during that period which resulted in a majority of locomotive engineers attended a special union meeting, called in accordance with section 11(b) of the constitution and bylaws of the International Brotherhood of Locomotive Engineers on August 4, 1999. The Brotherhood also contends that the Company has not complied with the provisions of article 86 of agreement 1.2 contravening the requirement of a fair and impartial hearing.

It is also the Brotherhood's position that the discharge of Locomotive Engineer Ager was totally unwarranted and that he must be made whole with respect to all wages and benefits lost.

The Company has declined the Brotherhood's appeal.

FOR THE COUNCIL:

(SGD.) M. W. SIMPSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. RENY
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. K. MacDougall	– Counsel, Montreal
R. Reny	– Human Resources Associate, Pacific Division, Vancouver
S. Michaud	– Business Partner – HR, Pacific Division, Edmonton
J. Vena	– Superintendent, Operations, Vancouver
R. Eisenman	– Transportation Supervisor, Vancouver
E. Storms	– Operations Manager, Crew Management Centre, Edmonton

And on behalf of the Council:

B. McHolm	– Counsel, Saskatoon
D. J. Shewchuk	– Sr. Vice-General Chairman, Saskatoon
G. Hallé	– Canadian Director, BLE, Ottawa
R. E. Lee	– Local Chairman, Vancouver
G. L. Ager	– Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes, on the balance or probabilities, that Locomotive Engineer Ager was not instrumental in organizing a concerted work stoppage in the Vancouver terminal on August 4 and 5, 1999. He was discharged substantially by reason of the Company's opinion that he played a leadership role.

It is common ground that employees at the Vancouver terminal did engage in a withholding of their services on August 4 and 5, 1999. Approximately one hundred employees attended a union meeting which took place on both of those dates. The grievor was among them. Unfortunately, in his communications with the Company Mr. Ager left the clear impression that he was one of the employees who called the special union meeting. In particular, he wrote Operations Superintendent V.J. Vena a letter dated August 12, 1999, apparently after receiving notice of his impending investigation. Among the statements contained in that letter is the following:

The following is my formal employee statement to be used in the investigation:

1. The President of Division 945 has the power to call special meetings and must call special meetings when a request is made in writing by five or more members ... **the signatories of the request must be in attendance at the special meeting for the division president to call the meeting to order** ... notices are posted at terminals and on BLE Bulletin Boards five days prior to the time a special meeting is scheduled.

(original elisions – emphasis added)

The balance of the letter relates to the grievor's view of the application of the **Canada Labour Code** in the circumstances, and what he believed to be his unfettered right to attend a duly constituted union meeting, notwithstanding that it might involve withholding his services from the Company in concert with others. The letter would clearly suggest that Mr. Ager considered himself compelled to be at the meeting as one of the five members who requested it be held.

Matters did not improve during the course of the grievor's investigation. The Arbitrator is satisfied that answers which he gave to the Company during the course of that interview still left in substantial doubt whether Mr. Ager was not in fact one of the five employees who had signed a letter requesting the special meeting of August 4 and 5, 1999. In answer to a specific question as to whether he was such a signatory he responded "I don't believe I was, but if I was, I was there." In the result the Company formed the opinion that Mr. Ager was instrumental in leading the work stoppage, and discharged him from service.

At the arbitration hearing the Council tendered in evidence, *in camera*, a copy of the letter signed by the 5 employees requesting the special union meeting which was instrumental in the work stoppage of August 4 and 5, 1999. The grievor is clearly not a signatory of that document. In the result, on the material before me, it is established that his involvement in the work stoppage was no greater than that of any other employee who would have been a mere participant, rather than a ringleader or organizer. In the circumstances I am satisfied that it is appropriate to substitute for the grievor's discharge an assessment of thirty demerits, the penalty given to other employees similarly involved.

This is not, however, a case for compensation. The grievor clearly left the impression with the Company that he was one of the five signatories to the letter requesting the special meeting. In the Arbitrator's view there is no other reasonable conclusion to be drawn from his letter of August 12, 1999 to Mr. Vena. That document specifically explains that the employees who request the special meeting must be in attendance. In my view it was not unreasonable for the Company to have drawn from the grievor's correspondence the obvious inference that he felt himself obliged to attend the union meeting as he was one of the five signatory employees who requested it. On the whole, therefore, this is not a circumstance in which the Company should be held liable for the grievor's loss of wages and benefits for the period since his discharge. Given his careless use of language, his termination was substantially of his own making.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost, without loss of seniority and with the substitution of thirty demerits for his participation in the concerted work stoppage of August 4 and 5, 1999.

February 12, 2000

(signed) MICHEL G. PICHER
ARBITRATOR