

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3092

Heard in Montreal, Wednesday, 9 February 2000

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 Locomotive Engineer Schultz of Vancouver, B.C., for failing to comply with Company instructions contained in General Notice No. 032 on May 18, 1999.

### **JOINT STATEMENT OF ISSUE:**

On May 18, 1999, Locomotive Engineer Schultz was assigned to the 07:55 Lynn Creek Yard assignment that was required to perform switching within the Lynn Creek Yard. Locomotive Engineer Schultz reported an unusual odour while his engine was in the vicinity of the Lynn Term switch.

Locomotive Engineer Schultz subsequently advised the on-duty supervisor that he was booking sick and departed Company property.

Following an investigation into the incident, Locomotive Engineer Schultz was assessed ten (10) demerits which was subsequently reduced to a written reprimand.

The Brotherhood's position is that Locomotive Engineer Schultz did follow the instructions contained in General Notice No. 032 and did not depart Company property without authority when he booked sick and therefore there is no justification for the issuance of discipline.

On October 22, 1999, as a result of this and subsequent incidents that are currently in dispute, Locomotive Engineer Schultz was discharged for accumulation of demerits.

The Company's position is, in reducing the level of discipline to a written reprimand, took this into consideration with regard to the portion of the General Notice No. 032 that applies to getting approval to depart Company property. The issuance of the written reprimand was for Locomotive Engineer Schultz' failure to comply with the second portion of the General Notice No. 032 when he failed to inform the Crew Management Centre.

The Brotherhood has requested that the written reprimand assessed Locomotive Engineer Schultz be removed from his record.

The Company disagrees and 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. Reny          | – Human Resources Associate – Pacific Division, Vancouver |
| R. K. MacDougall | – Counsel, Montreal                                       |
| 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  
F. Schultz – Grievor

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that Locomotive Engineer Schultz did properly comply with instructions contained in General Notice No. 032 when he booked sick on May 18, 1999. The rule in question reads as follows:

The on duty Assistant Superintendent, Operations Coordinator or General Yard Coordinator must be notified by the employee reporting sick or unfit before he/she leaves the property. This instruction does not relieve the employee of his/her responsibility to call the Crew Management Centre in Edmonton.

The record discloses that Mr. Schultz left work after he felt indisposed following what he believed was exposure to toxic fumes. It is not disputed that upon leaving the workplace, at 13:45, Mr. Schultz advised the assistant superintendent that he should book him off sick. Shortly thereafter, upon returning home, he contacted the Crew Management Centre in Edmonton and advised them of his status.

The Company's case would succeed if it were clear that its rule requires the employee to contact both the assistant superintendent and the Crew Management Centre before leaving the property. The language of the rule is not to that effect, however. The reporting obligation prior to leaving the property is restricted to communicating to either the assistant superintendent, the operations coordinator or the general yard coordinator, as reflected in the first sentence of the rule. While the rule reiterates the more general obligation to keep the Crew Management Centre in Edmonton advised, it does not, on its face, make that advice a condition precedent to leaving the property. In the circumstances I can see no violation of the rule by Locomotive Engineer Schultz.

The grievance is therefore allowed. The Company is directed to withdraw the written reprimand from his record forthwith.

February 12, 2000

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**