

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3093

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 discipline, ten (10) demerits assessed to Locomotive Engineer F. Schultz of Vancouver, B.C., for booking unfit at 06:55 for his regular 07:55 Lynn Creek yard assignment on June 24, 1999.

Appeal the discharge of Locomotive Engineer F. Schultz effective October 22, 1999 for accumulation of demerits.

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

On June 24, 1999 the Locomotive Engineer Schultz was assigned to the 07:55 Lynn Creek Yard assignment. At 06:55, Locomotive Engineer Schultz contacted the Crew Management Centre and advised that he was booking unfit as a result of not being able to utilize his personal vehicle because he had overlooked renewing his insurance.

On July 9, 1999 Locomotive Engineer Schultz provided an employee statement and was assessed ten (10) demerits for causing a delay to the 07:55 Lynn Creek assignment.

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.

It is the Brotherhood's position that Locomotive Engineer Schultz did everything reasonable, considering all the relevant circumstances, to notify the Company as far in advance as practicable, in order to minimize the delay.

The Brotherhood has requested that the ten (10) demerits assessed Locomotive Engineer Schultz be removed from his record and that he be reinstated into Company service with full compensation for all wages and benefits lost since October 22, 1999.

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**

On June 24, 1999 the grievor failed to appear at work to undertake his regular assignment. The assignment in question was to begin at 07:55. It is common ground that at approximately 06:50 on that morning the grievor contacted the Crew Management Centre and booked unfit. The sole reason for the grievor's booking unfit was that he realized that morning he had failed to renew his car insurance, and could therefore not drive to work. He submits that he considered that in the circumstances any alternative means of getting to work, including a taxi, would have caused still further delay to the Company, and that it was preferable that he give telephone notice of his absence when he did.

The Arbitrator is not impressed with the case put forward by Mr. Schultz. It is obviously his most basic obligation to attend at work when scheduled to do so. While he may be excused from that obligation for good and valid reasons, it is not clear to the Arbitrator that the negligent lapsing of his car insurance, or his failure to advert to that circumstance in sufficient time to make alternative arrangements to transport himself to work, would justify his booking off for the day at extremely short notice to the Company.

The sole issue is the appropriate measure of discipline in the circumstances. It is common ground that prior to this infraction Mr. Schultz' disciplinary record stood at fifty-five demerits. The assessment of ten demerits imposed by the Company resulted in his discharge for the accumulation of a total of sixty-five demerits. In the Arbitrator's view it is significant that the grievor is an employee of twenty-two years' service. That is a mitigating factor which, combined with the relatively minor nature of the culminating infraction, would justify a "last chance" substitution of penalty by the exercise of the Arbitrator's discretion. In the circumstances, therefore, I direct that the ten demerits assessed against the grievor be struck from his record, and that a written reprimand be substituted. The grievor shall be reinstated into his employment forthwith, without compensation for wages and benefits lost and without loss of seniority.

February 12, 2000

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