

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3150

Heard in Montreal, Wednesday, 11 October 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal of the discipline assessed Locomotive Engineer R.W. Halicki of Vancouver, B.C.

JOINT STATEMENT OF ISSUE:

On August 4, 1999, at approximately 07:15, Locomotive Engineer Halicki booked off OCS (On Company Service) to attend a Health and Safety Meeting. Locomotive Engineer Halicki was subsequently advised at 08:00 on August 5, 1999 that this meeting was cancelled at which time he requested to be shown as unfit. Locomotive Engineer Halicki remained off the working board until approximately 18:10 on August 5, 1999.

On November 1, 1999, Locomotive Engineer Halicki was required to provide a formal employee statement in connection with his alleged participation in an illegal work stoppage from August 3rd to 5th, 1999 at Vancouver, B.C., including the Greater Vancouver Terminal. Locomotive Engineer Halicki was subsequently assessed thirty (30) demerits for: "your participation in a concerted job action from August 3rd to August 5th, 1999 at Vancouver, B.C., including the Greater Vancouver Terminal."

The Brotherhood appealed the assessment of discipline to Locomotive Engineer Halicki on the grounds that the Company has not discharged the burden of proof to establish that Mr. Halicki participated in a concerted job action and in view of the evidence, the Company did not establish such proof.

The Brotherhood therefore requested that the discipline assessed against Locomotive Engineer Halicki be removed from his personal record.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK
FOR: 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, Vancouver
- J. C. McDonnell – Counsel, Montreal
- R. Eisenman – Terminal Transportation Supervisor, Surrey
- R. J. Dixon – Vice-President, Labour Relations & Employment Legislation, Montreal

And on behalf of the Council:

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

AWARD OF THE ARBITRATOR

Prior awards of this Office establish that bargaining unit employees at the Vancouver Terminal engaged in an unlawful withholding of their services on August 4 and 5, 1999. Some one hundred of them attended union meetings on both of the dates in question (**CROA 3090**).

The instant case involves a dispute as to whether the grievor participated in the unlawful work stoppage. The grievor, Locomotive Engineer R. W. Halicki, booked off by calling the CMC at 08:16 on August 4, 1999. It is common ground that he anticipated booking off on Company business to attend a Health and Safety meeting scheduled for the following day, August 5, 1999. When he was subsequently advised by the manager of the CMC that the Health and Safety meeting was cancelled, and that his services would be required he responded that he would not be available for duty and requested that his status be changed to unfit.

In the Arbitrator's view the evidence discloses circumstances which, on the balance of probabilities, do indicate that the grievor did not absent himself for the purposes of participating in the unlawful work stoppage. It is common ground that the grievor would not have been available to be at home through August 5, 1999 if he had accepted a work assignment on August 4, 1999. The evidence establishes, beyond any doubt, that on August 5th the grievor was required to be at Royal Columbia Hospital for consultation with a social worker in relation to the condition of his father, who was then suffering a terminal illness, and in respect of whom critical decisions needed to be made through urgent family consultation. In the circumstances I am satisfied Mr. Halicki did have a justifiable excuse for declining work on both August 4 and 5, 1999.

The grievance is therefore allowed. The Arbitrator directs that the thirty demerits assessed against the Locomotive Engineer Halicki be stricken from his record.

October 13, 2000

(signed) MICHEL G. PICHER
ARBITRATOR

SUMMARY – CROA 3150

Locomotive Engineer Halicki – union engaged in an illegal strike in Vancouver in August 2002 – **CROA 3090** – employee booked off for personal reasons – company refused and he booked “unfit” – arbitrator discussed balance or probabilities, burden of proof – employee had valid personal reasons for requiring time of duty – **GRIEVANCE ALLOWED**

KEYWORDS – CROA 3150

CNR – BLE October 2002 discipline book sick illegal strike personal leave balance probabilities burden proof allowed