

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3151

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 the discipline assessed the record of Locomotive Engineer C.D. Waite of Vancouver, B.C.

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

On August 3, 1999, Locomotive Engineer Waite booked off sick, which continued until approximately August 5, 1999.

On October 19, 1999, Locomotive Engineer Waite 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 Waite 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 Waite on the grounds that the Company has not discharged the burden of proof to establish that Mr. Waite 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 Waite 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, Surry
- 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 C.D. Waite, contacted the Crew Management Centre at 17:15 on August 3, 1999, booking sick.

The material establishes, beyond any substantial controversy, that the grievor suffered an injury to his index finger while at home on August the 3rd. It appears that while he was operating a power drill the bit broke and entered his finger, penetrating to the level of the bone. It is common ground that Mr. Waite sought, and eventually obtained, medical attention for his finger. He eventually received a tetanus injection and x-rays, albeit his physician's schedule required a delay until August 5 before he was seen.

In the circumstances the Arbitrator is inclined to give the grievor the benefit of the doubt with respect to the allegation that the sole reason of his absence was to participate in the unlawful work stoppage. I accept, on the balance of probabilities that, as the grievor claims, he was physically unable to work on the two days in questions. The grievance must therefore be allowed.

The Arbitrator directs that the thirty demerits assessed against Locomotive Engineer Waite be stricken from his record.

October 13, 2000

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

### **SUMMARY – CROA 3151**

Locomotive Engineer C.D. Waite – union engaged in an illegal strike in Vancouver in August 2002 – **CROA 3090** – employee booked sick – received medical treatment for injury received while off duty – balance of probabilities – GRIEVANCE ALLOWED

### **KEYWORDS – CROA 3151**

CNR – BLE October 2000 discipline illegal strike injured booked sick injured medical treatment allowed