

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3152

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 G. Kamlade of Vancouver, B.C.

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

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

On October 14, 1999, Locomotive Engineer Kamlade 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 Kamlade 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 Kamlade on the grounds that the Company has not discharged the burden of proof to establish that Mr. Kamlade 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 Kamlade 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 |
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## **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 G. Kamlade, booked off sick at 10:10 on August 3, 1999. Although the grievor did subsequently provide to the Company a very terse medical note dated August 3, 1999 which stated "Off work, today and tomorrow, due to illness", the overall evidence presented on the behalf of the grievor is less than persuasive. He declined to return two telephone calls from the Company, when messages were left requesting him to do so. The Arbitrator doubts the response of the grievor during the course of his investigation to the effect that he did not get the messages relayed to him by telephone, one of which was received by a female occupant of his home. Additionally, there is no documented reason excusing the grievor's absence on August 5, nor anything to document his assertion that the reason for his absence on the 4th was: "Probably the flu."

The grievance must therefore be dismissed.

October 13, 2000

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

### **SUMMARY – CROA 3152**

Locomotive Engineer G. Kamlade – union engaged in an illegal strike in Vancouver in August 2002 – **CROA 3090** – employee booked sick – doctor's note very vague – employee made no contact with company when requested to do so – balance of probabilities – **GRIEVANCE DISMISSED**

### **KEYWORDS – CROA 3152**

CNR – BLE October 2000 discipline illegal strike booked sick medical document balance probabilities dismissed