

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3155

Heard in Montreal, Wednesday, 11 October 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Appeal the discipline assessed the record of Locomotive Engineer R.J. Meers of Vancouver, B.C.

BROTHERHOOD'S STATEMENT OF ISSUE:

Between the dates of August 3 – 5, 1999 Locomotive Engineer Meers was not booked off and was available for duty.

On November 8, 1999, Locomotive Engineer Meers 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 Meers 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 Meers on the grounds that the Company has not discharged the burden of proof to establish that Mr. Meers 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 Meers be removed from his personal record.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| 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:

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| 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 record discloses that upon the completion of his tour of duty at 22:00 (PT) on August 3, 1999, the grievor, Locomotive Engineer R.J. Meers, booked twenty-four hours personal rest. It is common ground that after the expiry of his rest period the grievor was liable to be called for service in the locomotive engineers' pool. He could, among other things, be called to replace another pool engineer who might be unavailable, a circumstance described as a "boost". In the normal course, if the Company is unable to reach an individual who is entitled to a boost that person suffers no adverse consequence in terms of their ensuing work opportunities.

In the case at hand the Company did seek to contact the grievor for the purposes of a boost following his rest, which expired at 22:00 (PT) on August 4, 1999. At 12:12 (PT) on August 5, 1999 the CMC placed a call to the grievor's home leaving a message on his answering machine. It was not returned. At the same time it placed a second call to his cell phone, which was not answered. Shortly thereafter, at 15:00 (PT) the CMC placed a second call to his home, again leaving a message on his answering machine. At the same time it placed a second call to his cell phone which then relayed a message indicating that the telephone was turned off.

The grievor admits that he attended the union meetings on both August 4 and August 5. While the Arbitrator appreciates that, in normal circumstances, the failure of the Company to contact an individual for the purposes of a "boost" does not result in adverse consequences, that general rule does not speak to the facts of the instant case. If, as I am satisfied occurred in the case at hand, the grievor deliberately made himself unavailable, and evaded normal efforts at contact by the Company for the sole purpose of withholding his availability for work in concert with others, he must be found to have participated in the unlawful work stoppage. Implicit in the rules governing the boosting of locomotive engineers from the pool is an understanding that individuals will not take extraordinary measures to make themselves unavailable, and in particular do so for the purposes of contributing to an unlawful work stoppage. I am satisfied, on the balance of probabilities, that that is what transpired in the case at hand.

For these reasons the grievance must be dismissed.

October 13, 2000

(signed) MICHEL G. PICHER
ARBITRATOR