

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3156

Heard in Calgary, Tuesday, November 14, 2000

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

And

### CANADIAN COUNSEL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

#### DISPUTE:

Appeal the discipline assessed the record of Locomotive Engineer R.A. Saunders of Vancouver, B.C.

#### JOINT STATEMENT OF ISSUE:

On August 5, 1999, Locomotive Engineer Saunders missed a "boost" at 04:10 for train 202 and at 05:04 for train 412. Locomotive Engineer Saunders was subsequently ordered for his regular turn, ordered 22:15, August 6, 1999 on train 102.

On October 29, 1999 Locomotive Engineer Saunders was requested to provide an employee statement on November 3, 1999, 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 Saunders 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 Saunders on the grounds that the Company had violated article 86 of agreement 1.2. In addition, the company has not discharged the burden of proof to establish that Mr. Saunders 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 Locomotive Engineer Saunders be removed from his personal record.

#### **FOR THE COUNCIL:**

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

#### **FOR THE COMPANY:**

**(SGD.) R. RENY**  
**FOR: VICE-PRESIDENT, LABOUR RELATIONS**

Appearing on behalf of the Company:

R. Reny	– Human Resources Associate, Vancouver
S. Michaud	– Business Partner, Human Resources, Vancouver
R. Eisenman	– Transportation Supervisor, Vancouver
S. Ziemer	– Human Resources Associate, Vancouver
S. Blackmore	– Human Resources Associate, Edmonton
D. C. McDonnell	– Legal Counsel, Montreal

Appearing on behalf of the Council:

D. E. Brummond	– Vice-General Chairman, Kamloops
D. J. Shewchuk	– Vice-General Chairman, Saskatoon



missing or have been discarded, or that the individual had little reason to have his or her memory drawn to the event in question, and might therefore be disadvantaged in attempting to recall events. An examination of the grievor's statement, however, reveals no such prejudice or disadvantage. As a general matter, Mr. Saunders was able to recall his activities during the time in question, and did not invoke any specific prejudice or problem beyond asserting that he might better be able to remember if he had received notice of his investigation at an earlier date. On the whole, I am satisfied that there was no material prejudice to the grievor by reason of the date of the notice of investigation which he received. Further, the two day period between the notice and the holding of the investigation gave him a reasonable time to construct his own recall of the events.

What, then, does the evidence disclose? Firstly, by the grievor's own admission, he was in attendance at the union meetings in Vancouver on August 4 and 5, 1999. There is no explanation given for the fact that his telephone was not answered at home at approximately 3:00 and 4:00 a.m. in the morning of August 5, 1999. Nor is there any explanation as to why he did not return calls to the Company when he retrieved the messages left on his telephone or, perhaps more significantly, why he failed entirely to make any contact with the employer through the Crewtalk system, in a manner consistent with his normal practice, or that his first contact in that regard came only after 85 hours, at the end of the concerted withholding of services. On the basis of all of the foregoing I am satisfied, on the balance of probabilities, that the grievor did participate in the illegal strike by deliberately avoiding contact with the Company and making himself unavailable for service.

The grievance must therefore be dismissed.

November 20, 2000

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