

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3162

Heard in Calgary, Wednesday, November 15, 2000

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Appeal of discipline, 10 demerit marks assessed the record of Mr. K.J. Alexander of Lethbridge, Ab.

JOINT STATEMENT OF ISSUE:

On November 13, 1998, Mr. K.J. Alexander's discipline record was debited with 10 demerit marks for "falsely claiming that you were sick to avoid performing work during a tour of duty, after you had been denied a leave of absence, Extra 3049, June 9, 1998, Lethbridge, Alberta."

The Council has advanced a grievance requesting that the discipline assessed be removed from Mr. Alexander's record. The Council's position is that Mr. Alexander did not book sick and the evidence does not support the discipline assessed.

The Company has denied the Council's request.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) C. M. GRAHAM
FOR: GENERAL MANAGER, FIELD OPERATIONS

Appearing on behalf of the Company:

C. M. Graham	– Labour Relations Officer, Calgary
J. Copping	– Manager, Labour Relations, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
C. Lencucha	– Operations Coordinator, Lethbridge

Appearing on behalf of the Council:

D. H. Finnson	– Vice-General Chairperson, Calgary
L. O. Schillaci	– General Chairperson, Calgary
G. R. Crawford	– Local Chairperson, Lethbridge
R. Van Pelt	– Vice-Local Chairperson, Lethbridge

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the Company has not discharged the onus of establishing, on the balance of probabilities, that the grievor falsely claimed that he was sick, for the purpose of avoiding productive work during his tour of duty. The evidence confirms that in fact the bulk of the grievor's tour of duty was completed when he communicated with the rail traffic controller at 22:00 on June 9, 1998. A transcript of the grievor's communication to the rail traffic controller reveals that Conductor Alexander asked the dispatcher to contact Supervisor Lencucha to inquire whether the grievor and his crew might by-pass their final assignment, and operate their train to their home terminal, or, alternatively, whether it might be possible to relieve him, as he was not feeling well.

In the Arbitrator's view, what was communicated by the grievor was in the nature of a general inquiry, not an ultimatum, as apparently became the view of members of management. The decision was made to relieve the grievor at Raymond, where he was met by Mr. Lencucha, who drove the grievor and his locomotive engineer back to their home terminal of Lethbridge. It may be noted that the locomotive engineer's statement confirms that the grievor did complain of a headache during the tour of duty, and that his work-mate attempted to locate aspirin to assist him, without success.

On the whole, bearing in mind that the Company bears the burden of proof, the Arbitrator cannot sustain the discipline assessed against the grievor in the circumstances disclosed. The grievance must therefore be allowed, and the Arbitrator directs that the ten demerits assessed against Mr. Alexander be stricken from his record.

November 20, 2000

(signed) MICHEL G. PICHER
ARBITRATOR