

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3211

Heard in Calgary, Tuesday, 13 November 2001

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Appeal the discipline assessed the personal record of Locomotive Engineer T. Trzmiel of Edmonton, AB for “inability to fulfill responsibilities as a Locomotive Engineer and failure to follow the instructions of a Supervisor during tour of duty on May 3, 2001.

COUNCIL’S STATEMENT OF ISSUE:

On May 3, 2001 Locomotive Engineer Trzmiel was assigned to Train M35741 02, and upon arrival at Edmonton Terminals he was required to yard his train at Bissell Yard. When approaching the fuel stand at the west end of track BS03, a shop employee suddenly displayed a blue flag in front of the movement. Locomotive Engineer Trzmiel requested that the Company officer on the scene at the time attend the lead locomotive due to his concern with respect to a safety issue and after a brief conversation took place, the supervisor pulled the train down a short distance to the spot.

The Company required that Locomotive Engineer Trzmiel attend to an employee investigation, and he was subsequently assessed discipline in the form of a thirty (30) day suspension and followed by a fifteen (15) day training period.

The Brotherhood contends that the discipline is unwarranted, excessive and patently unreasonable under the circumstances. Accordingly, the Brotherhood requests that the grievor be compensated for all lost earnings and benefits for the period of suspension, and further, that he be made whole for the time spent participating in training.

The Company has declined the appeal.

FOR THE COUNCIL:

(SGD.) D. E. BRUMMUND
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

- S. Blackmore – Labour Relations Associate, Edmonton
- R. Reny – Human Resources Associate, Vancouver
- S. Zeimer – Human Resources Associate, Vancouver
- R. Valliere – Superintendent, Edmonton
- J. Reynolds – Engine Service Officer, Edmonton

And on behalf of the Council:

- D. E. Brummund – Vice-General Chairman, Edmonton
- D. J. Shewchuk – General Chairman, Edmonton
- R. J. Ermet – Local Chairman, Jasper
- R. R. Shack – Local Chairman, Edson

AWARD OF THE ARBITRATOR

The material establishes that the grievor, for reasons he best appreciates, refused to advance his train several car lengths to a fuel station stop line. While he claims that he did not wish to do so because a blue flag was displayed some distance beyond that point, the Arbitrator finds that explanation entirely implausible. The evidence discloses that blue flags are normally placed at both the head and tail end of a train which is in the process of refuelling. The fact that the flag was there for the grievor's own protection was explained to him by Engine Service Supervisor John Reynolds, who was present at the time. The grievor stubbornly refused to respond to Mr. Reynolds' order to move ahead, requiring the supervisor to board his locomotive and move it forward.

The grievor's record reveals prior incidents of discipline for refusal to follow reasonable instructions. In the circumstances I am satisfied that the suspension assessed, followed by the training period, was reasonable in the circumstances. The grievance must therefore be dismissed.

November 16, 2001

(signed.) MICHEL G. PICHER
ARBITRATOR