

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3308

Heard in Calgary, Thursday, 14 November 2002

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### **DISPUTE:**

Appeal the discipline assessed the personal record of Locomotive Engineer B. Zalkowsky of Edmonton, AB, for "Late reporting of personal injury sustained on July 17, 2002 during tour of duty on train 711.", which resulted in the grievor's discharge for accumulation of demerits.

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

On July 17, 2002, Locomotive Engineer Zalkowsky sustained an injury releasing a handbrake while performing duties in relation to his assignment, train 711, at Rocky Mountain House, AB.

The Brotherhood contends that Locomotive Engineer Zalkowsky did take reasonable steps under the circumstances to report the injury to the proper authority, and that the Company has not determined the grievor's responsibility with respect to the instant matter as required under the terms and conditions of article 86, paragraph 86.1 of collective agreement 1.2

The Brotherhood has requested that the discipline assessed be expunged and that the grievor be reinstated into employment with the carrier and compensated for all wages and benefits lost during his termination.

The Company does not agree with the Brotherhood's position.

**FOR THE BROTHERHOOD:**

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

**FOR THE COMPANY:**

**(SGD.) S. BLACKMORE**  
**FOR: VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

S. Blackmore – Manager, Human Resources, Edmonton  
D. VanCauwenburgh – Manager, Human Resources, Winnipeg

J. Berriault – Transportation Supervisor, Vancouver  
B. Kalin – Superintendent, Edmonton  
K. Guiney – Manager, Human Resources, Transcona

And on behalf of the Brotherhood:

B. McHolm – Counsel, Saskatoon  
D. E. Brummund – Sr. Vice-General Chairman, Edmonton  
B. Zalkowsky – Grievor

### **AWARD OF THE ARBITRATOR**

The material confirms that the grievor sustained a back injury while at work. It is not disputed that he has been on a medical leave of absence since the injury developed, in receipt of full workers' compensation benefits.

The Company assessed fifteen demerits against the grievor's record by reason of his failure to report the injury on the same day it was sustained. Mr. Zalkowsky explains that while releasing a hand brake on a locomotive he felt a sharp pain in his lower back. He states that he believed at the time that it was simply a muscle pull which would heal of its own accord. He then worked through his tour of duty, going off duty at 06:20 on July 18, 2002. He then booked twenty-four hours' rest. On July 20, 2002 he realized that the pain in his back was becoming more severe, as a result of which he booked sick and placed a call to his supervisor indicating that he had sustained the injury on July 18th.

The rule which the grievor is said to have violated is item 5.1(e) of Edmonton Zone Operating Manual which reads as follows:

**(e)** Employees who sustain personal injuries while on duty must complete CN form 3903 with the on-duty Transportation Supervisor or appropriate Company Officer prior to completion of tour of duty, if practicable.

The Arbitrator is satisfied that the grievor was in technical violation of the rule. While it may be understandable that an individual will not report what he or she initially believes to be an innocuous event, the health and safety obligations of the Company do require a degree of vigilance and reporting accountability in respect of any on duty injury. In the result, I am satisfied that the grievor made himself liable to some degree of discipline for failing to report what transpired.

The real issue is the measure of discipline appropriate in the circumstances. The Arbitrator has substantial difficulty, having regard to the prejudice caused to the Company, if any, with the assessment of fifteen demerits and the resulting discharge of an employee of over twenty years' service for this infraction. In my view the registering of a written caution or warning to the grievor would have sufficed in the circumstances to apprise him of the need to faithfully report any on duty injury in a timely manner. I am therefore satisfied that a reduction of penalty to a written reprimand and the removal of the fifteen demerits assessed against Mr. Zalkowsky, coupled with certain conditions described below, is an appropriate disciplinary result in the circumstances.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be corrected to indicate a written reprimand for his failure to observe item 5.1(e) of the Edmonton Zone Operating Manual for the injury sustained on July 17, 2002, with the removal from his record of the fifteen demerits assessed against him. The grievor shall further be reinstated into his employment without loss of seniority and with compensation, if any, for all wages and benefits lost. As a condition of reinstatement, however, having regard to his prior record of injuries, illness and absenteeism (see **CROA 3306** and **3307**), the grievor must agree to the condition that for the two year period following his return to work he shall maintain a record of absenteeism, including failed responses to calls and reporting unfit for work, no greater than the average for the employees in his classification at his location. His failure to maintain the average of his peers for any six month period within the two years in question shall render him liable to discharge.

Should there be any dispute between the parties having regard to the interpretation or implementation of this award the matter may be spoken to.

November 19, 2002

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