

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3376

Heard in Montreal, Wednesday, 15 October 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Appeal the termination of Locomotive Engineer J. MacDonald of Edmonton, AB, effective on June 26, 2003 for "Fraudulent submission of time claims in duplicate pay and payment for time not worked and delay to assignment on May 31, 2003".

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood asserts that the Company has not demonstrated that Locomotive Engineer MacDonald was culpable with respect to fraudulent time claim submissions and payment for time not worked, that would in turn result in a discharge response from the Company.

In the alternative, the Brotherhood contends that if discipline is in fact warranted, then the termination of Locomotive Engineer MacDonald is a reaction that is far too severe when considering mitigating factors and the grievor's length of service.

The Brotherhood additionally contends that the grievor did not receive a fair and impartial hearing as contemplated in article 86 of agreement 1.2.

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

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

COMPANY'S STATEMENT OF ISSUE:

On Saturday, May 31, 2003, Mr. MacDonald and crew were ordered for 11:00, on duty at 10:45 on Train 507 – Road Switcher, at Whitecourt. In addition to their regular Saturday work, they were instructed to run light engine to Windfall to lift engine 1651 and 48 loaded liquid cars. These cars were to be brought to Whitecourt and they would then fill their train out to 3,500 feet with them and set the balance off at Whitecourt.

The Company performed an audit on the crew's time claims and discovered a number of irregularities including the fact that they claimed for two train 507 assignments on May 31, 2003.

In investigation was conducted on June 12, 2003 in connection with circumstances surrounding Mr. MacDonald's two tours of duty as locomotive engineer on trains L50751-31 on May 31, 2003, and a supplemental investigation was conducted on June 25, 2003. Mr. MacDonald was subsequently discharged as indicated.

The Brotherhood contends that the Company has not demonstrated that Locomotive Engineer MacDonald was culpable with respect to fraudulent time claim submissions and payment for time not worked and delay to his assignment. In the alternative, the Brotherhood contends that if discipline is in fact warranted, then the termination

of Locomotive Engineer MacDonald is a reaction far too severe when considering mitigating factors and the grievor's length of service.

The Brotherhood additionally contends that the grievor did not receive a fair and impartial hearing on June 25, 2003, as contemplated in article 86 of agreement 1.2.

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

The Company does not agree with the Brotherhood's position and has declined the appeal.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

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

There appeared on behalf of the Company:

- S. Blackmore – Manager, Human Resources, Edmonton
- L. Quilichini – Transportation Supervisor, Edmonton

And on behalf of the Brotherhood:

- D. E. Brummund – Sr. Vice-General Chairman, Edmonton
- R. Dyon – General Chairman, Montreal
- B. Boechler – General Chairperson, UTU, Edmonton
- R. Hackl – Vice-General Chairperson, UTU, Edmonton
- J. MacDonald – Grievor

AWARD OF THE ARBITRATOR

On the basis of the material filed and the evidence submitted at the hearing, the Arbitrator is satisfied that the grievor rendered himself subject to a serious degree of discipline by the manner in which he worked his assignment on May 31, 2003 and the nature of the time claim which was made on his behalf in relation to that date. I am satisfied, on the balance of probabilities, that the grievor's crew engaged in an inexcusably slow and unproductive pace of work for which no clear explanation has been brought forward. While it may be that certain aspects of that fault were not initiated by Mr. MacDonald, it appears undeniable that he remained extraordinarily passive and tolerant of what was occurring.

But for one compassionate factor, the Arbitrator would sustain the grievor's discharge. The record discloses that Mr. MacDonald is an employee of twenty-nine years' service, apparently one year from obtaining eligibility for retirement, and that there is no previous discipline over the entire period of his employment for any similar infraction relating to making a fraudulent time claim or any other form of dishonesty. In other words, this appears to have been an isolated and uncharacteristic incident in the career of a long service employee. In the circumstances, therefore, I deem it appropriate to substitute another measure of discipline, albeit a relatively severe penalty given the seriousness of the conduct displayed by the grievor. I am also satisfied that the evidence does not disclose any departure from the standard of a fair and impartial disciplinary investigation merely because the Company conducted a supplementary investigation to recall to the grievor's attention what it viewed as a similar assignment in the past.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost and without loss of seniority.

October 21, 2003

(signed) MICHEL G. PICHER
ARBITRATOR