

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3383

Heard in Calgary, Wednesday, 12 November 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The appeal of discipline assessed Locomotive Engineer C.L. Banman of Jasper, AB, for "Failure to accept a call for Train 305 on September 20, 2001."

BROTHERHOOD'S STATEMENT OF ISSUE:

On September 19, 2001, Locomotive Engineer Banman was ordered in straight-away service from Jasper to Edmonton on Train M30251 18 going off duty at the latter location at 05:10 on September 20, 2001. At this time, the grievor noted that he was lined up for 16:00 on Train 783 and he prepared himself accordingly. At approximately 19:00, Mr. Banman was called for 21:00 on train 305, five (5) hours later than originally planned and anticipated. Conversations ensued between a transportation supervisor and a CMC crew supervisor relating to poor line-up information which ultimately resulted in Locomotive Engineer Banman being removed from the working board.

The Company conducted an investigation in connection with Locomotive Engineer Banman's failure to accept a call for duty on September 20, 2001, and as the result of the investigation, the grievor was subsequently assessed a written reprimand.

The Brotherhood has contended that the grievor is the judge of his own condition, and that in the instant circumstances he properly invoked the right due to being unfit for duty.

The Brotherhood has requested that the written reprimand placed on the grievor's discipline record be expunged.

The Company has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) D. E. BRUMMUND

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. Blackmore – Human Resources Manager, Edmonton
R. Reny – Sr. Manager, Human Resources, Edmonton

And on behalf of the Brotherhood:

D. E. Brummund – Sr. Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, without dispute, that the grievor, Locomotive Engineer Banman, refused a call which he received at 19:00 for service on train 305 at 21:00 on September 20, 2001. As a result of that action he was issued a reprimand which is the subject of this grievance.

The evidence confirms that the grievor went off duty at 05:10 on the morning of September 20. According to the Company's Step 3 response to the grievance, at that point the grievor noted that he was lined up for duty at approximately 16:00. It does not appear disputed that the grievor obtained several hours' sleep during his layover at Edmonton. In the end, however, his on duty time was pushed back to 21:00, with a corresponding call time of 19:00.

The Company does not dispute that it would have been within the grievor's prerogatives to notify the crew dispatcher that he would not be able to accept a call for a train in the later hours of September 20, 2001. The material filed before the Arbitrator by the Company includes line-ups taken at various points during the day. Those line-ups, which were available to the grievor, clearly indicate that his call would not come at 16:00, as originally, expected. For example, the line-up at 07:50 Edmonton time indicated that he would be handling an extended service Jasper-bound train at 20:00. At 15:49 Edmonton time, close to what the grievor originally considered his call time of 16:00, the call time for train 305 was shown as 19:30. While it is not disputed that it would have been available to the grievor to obtain current estimates of his call time, and that it was within his capacity to be aware of the growing delay in what he originally believed to be a call time of 16:00, he made no attempt to advise the crew dispatcher that he would not be fit to handle a later call. In fact, it is only when he was called at 19:00 for an ordered time of 21:00 that Locomotive Engineer Banman declined the call. The decline caused disruption and additional cost to the Company, as it was compelled to deadhead his conductor back to Jasper and utilize an Edmonton crew to handle train 305.

The Arbitrator is satisfied that in the circumstances the grievor was deserving of discipline, and that a written reprimand was appropriate. While there is no question that it was for the grievor to be the judge of his own fitness, it was clearly incumbent upon him to make the appropriate judgement well before 19:00, when he was called. By waiting until he effectively received the call to refuse it, contrary to Company rules, the grievor caused a delay of the train and additional expense to the Company. In the circumstances it was plainly incumbent upon him to advise his employer prior to the call that he would not be fit to handle any train beyond a call at 19:00 and to do so reasonably in advance of that time. If, as suggested in the argument of the Brotherhood's representative, the grievor was entitled to, in his words, "analyse" his condition up to the point of receiving the call, the orderly assignment and manning of trains would become virtually unmanageable for the Company. The employer would never know, virtually until the moment of the call, whether it in fact had an employee it could rely upon to handle a train as scheduled.

For the foregoing reasons the Arbitrator is satisfied that the grievor was deserving of discipline, and that the reprimand which was issued to him was justified in the circumstances. The grievance must therefore be dismissed.

November 17, 2003

(signed) MICHEL G. PICHER
ARBITRATOR