

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**CASE NO. 3431**

Heard in Montreal, Tuesday, 8 June 2004

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**  
**(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

**EX PARTE**

**DISPUTE:**

Appeal the discharge of Locomotive Engineer G.J. Robertson of Kamloops, BC.

**UNION'S STATEMENT OF ISSUE:**

On or about November 22, 2003, Locomotive Engineer Robertson was served a notice to appear to attend an employee statement scheduled for purposes of investigating a case of conduct unbecoming alleged to have occurred during a conversation with the Crew Management Centre on November 19, 2003.

On or about December 18, 2003, the grievor was once again served with a notice to appear for an investigation that was to be conducted on January 5, 2004, that represented in essence a duplication of the notice that was served on or about November 22, 2003.

On January 5, 2004, the Company dismissed the grievor for "... failure to come in for employee statements in connection with the Company's numerous attempts at investigating the circumstances surrounding your 'conduct unbecoming an employee' as well as your 'failure to appear for a formal investigation'."

The Union contends that the grievor's discharge was unwarranted under the circumstances.

The Union has 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 the period of his termination.

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

**FOR THE UNION:****(SGD.) D. E. BRUMMUND****FOR: GENERAL CHAIRMAN**

There appeared on behalf of the Company:

- R. Reny – Sr. Manager, Human Resources, Edmonton
- S. M. Blackmore – Manager, Labour Relations, Edmonton
- E. Blokzyl – Superintendent, BC South Zone
- D. Ryhorchuk – Assistant Superintendent, BC South Zone
- M. McAmmond – Transportation Supervisor

And on behalf of the Union:

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

**AWARD OF THE ARBITRATOR**

The material confirms, beyond any substantial dispute, that the grievor did fail to appear for an investigation. Even if one accepts, as the Union's representative suggests, that the grievor was in fact in attendance at the initially scheduled time of the investigation, on November 26, 2003, the fact remains that he did not appear both on November 27, when he claimed to be ill, or on January 5, 2004, when he gave no reason for his failure to attend and indeed no notice to the Company. Plainly there were grounds to discipline the grievor.

By the same token, the Arbitrator is in agreement with the Union's representative with respect to the severity of the discipline assessed against Mr. Robertson. At the time of the incident the grievor had thirty years' service and his record was clear. He had previously been involved in two prior incidents of failing to appear for an investigation, one in 1988 and one in 1999, each of which resulted in the assessment of ten demerits. However, there was no indication given to him that in January of 2004 his failure to appear at a scheduled investigation would result in his summary termination.

What the case at hand reveals, in the Arbitrator's view, is questionable judgement on the part of both the grievor and the supervisors dealing with his file. In the circumstances I am satisfied that he should be returned to employment, albeit subject to a suspension for one-half the period from his termination to the date of his reinstatement. That is based in large part on the fact that the grievor has a record of unacceptable recidivism with respect to failing to appear for investigations. The grievor shall, however, be compensated for one-half the period between the termination of his employment and his reinstatement, in recognition of the fact that the Company knew, or reasonably should have known, that summary termination is a sanction virtually unprecedented for merely failing to appear at an investigation (see **CROA 2987, 2353, 2009, 1935, 1859, 1666, 1423, 958**).

The grievance is therefore allowed, in part. One half the period between the grievor's discharge and reinstatement shall be recorded as a suspension for his repeated failure to appear for an investigation. Nothing in the instant award should be construed as in any way curtailing the ability of the Company to re-schedule and conduct the investigation into the events of November 19, 2003, should it choose to do so, and it goes without saying that the grievor remains under the obligation to attend such an investigation, if scheduled.

June 14, 2004

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