

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3605

Heard in Montreal, Wednesday, 14 February 2007

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of 15 demerits assessed to Locomotive Engineer S.J. Black of Red Deer, Alberta.

JOINT STATEMENT OF ISSUE:

On February 7, 2005 Locomotive Engineer S.J. Black was assessed 15 demerits for “booking unfit on call for train 261-02 on January 2, 2005 at Red Deer.”

On January 2, 2005 at 13:43 Engineer Black booked available for duty. At 23:30 Engineer Black was called for train 261-02 for 01:30 on January 3, 2005. At this time Engineer Black determined that he would not be fit for duty as required and booked unfit on call.

It is the position of the Union that the Company had no cause to discipline Engineer Black and requests that the 15 demerits be removed from his record. Alternatively, the Union submits that if the Company had cause to discipline Engineer Black, the penalty was excessive in all of the circumstances and ought to be reduced.

The Company has denied the Union’s request.

FOR THE UNION:

(SGD.) D. R. ABLE

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. AYOTTE

**FOR: D. McFARLANE, ASSISTANT VICE-
PRESIDENT, FIELD OPERATIONS**

There appeared on behalf of the Company:

C. Ayton	– Labour Relations Officer, Calgary
D. Freeborn	– Labour Relations Officer, Calgary
B. Jacobs	– Road Manager, Red Deer
S. Nelson	– Manager Operations, Smiths Falls
S. Doyle	– Road Manager, Smiths Falls

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
D. Able	– General Chairman, Calgary
A. Werbiski	– Local Chairman, Red Deer
S. Black	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, beyond controversy, that the grievor did fail to accept a call received at 23:30 on January 2, 2005, in respect of Train 261-02 for 01:30 on January 3, 2005. The call and the declination occurred at a time when the grievor had booked back on as available for duty as of 13:43 on January 2, 2005.

In support of the grievance the Union relies in substantial part on the decision of this Office in **CROA 1759**. In that case it was recognized that employees who had been unable to obtain sufficient sleep at an away from home bunkhouse were not liable to discipline for declining a call by reason of their being unfit for duty.

The facts of the instant case are, in the Arbitrator's view, not sufficiently comparable to those in **CROA 1759**. Having booked on at or about the mid-day point of January 2, 2005, the grievor anticipated, having regard to the normal line up, that he would be called for duty at or about 08:00 the following morning. In fact, however, an unforeseen assignment caused his turn to come up sooner, some twelve hours after he booked on. The fact remains, however, that the grievor held himself out to the Company, until 23:30, as being available for duty. It is at that time that the Company called him. While the Arbitrator does not question Mr. Black's judgement in determining that he had insufficient rest to handle train 261-02, it is difficult to escape the conclusion that he failed in his obligation to notify the Company that he was in fact not truly available to be called for duty as of that time.

Unfortunately, the record before the Arbitrator discloses a prior history of the grievor having failed to respond to calls for duty, extending back over a substantial number of years. In all of the circumstances I am satisfied that the assessment of fifteen demerits was within the appropriate range of discipline, and that the grievance must be dismissed.

February 16, 2007

(signed) MICHEL G. PICHER
ARBITRATOR