

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

CASE NO. 3756

Heard in Montreal, Tuesday, 12 May 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer Craig Cameron.

JOINT STATEMENT OF ISSUE:

On November 4, 2008, Mr. Cameron was required to attend a formal investigation in connection with the circumstances of his booking rest when ordered for the work train taxi at Novar for 08:40 on September 28, 2008.

Following the investigation, the Company issued a Discipline Form 780 dated December 3, 2008 assessing Mr. Cameron 25 demerit points and when combined with his active discipline led to his discharge from Company service for accumulation of demerits.

The Union contends that the discipline assessed Mr. Cameron was unwarranted and should be removed with Mr. Cameron being returned to service with full compensation for lost wages and benefits.

The Company disagrees.

FOR THE UNION:

(SGD.) P. VICKERS
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) R. A. BOWDEN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Corporation:

B. Hogan – Manager, Labour Relations, Toronto
D. VanCauwenbergh – Director, Labour Relations, Toronto

And on behalf of the Union:

J. C. Morrison – Counsel, London
P. Vickers – General Chairman, Sarnia
C. Cameron – Grievor

AWARD OF THE ARBITRATOR

The record discloses that the grievor had fifty demerits, albeit under grievance, on his record at the time of the incident giving rise to his termination. Mr. Cameron was assessed twenty-five demerits for booking rest when he was not entitled to do so, namely upon being taxied from Toronto to Novar, a location near Huntsville, where he was immediately to commence service as the engineer on a work train. In fact upon arrival in Novar he booked eight hours personal rest.

The gist of the grievor's case is that he believed that he was being simply deadheaded to Novar and would have the opportunity to book rest as the deadhead portion of his assignment would be treated as a separate assignment, rather than as part of a combined service.

Upon a review of the record the Arbitrator has some difficulty with the grievor's perception. A review of the conversation between Mr. Cameron and the crew dispatcher establishes that he was clearly told that he was to be in service on the work train, and that he was being called for 08:40 to proceed to Novar by taxi in furtherance of that assignment. I am satisfied that the grievor then knew, or reasonably should have known, that by reason of a shortage of sleep he would not be fit to perform the work at Novar as expected. His failure to communicate that to the Company, and to then proceed to Novar where he then booked off for eight hours of personal rest, caused the assignment to be substantially delayed, requiring other employees to remain idle. I am satisfied that the grievor did make himself liable to discipline for his actions.

The Union objects to the delay between the incident and the time the Company held its investigation. While there is obviously some delay between the incident on September 28, 2008 and the notice of investigation which was received by the grievor on October 23, 2008 there is no compelling evidence that there was any prejudice to Mr. Cameron by reason of that delay. This is not a case in which recall of the facts is particularly critical. The facts, including the recorded conversations of Mr. Cameron both with the crew dispatcher and with local supervisors, are not in dispute. The Union's objection with respect to delay is declined.

There is one mitigating factor to consider, which is that it is not uncommon for persons in the position of the grievor to be called to deadhead to the location of a work train, in the expectation that they will rest at that location and commence work after their period of rest. While I am satisfied that that was not the nature of the assignment given to Mr. Cameron, there may nevertheless have been some degree of error of judgement on his part. In the circumstances the Arbitrator is satisfied that this is an appropriate case for a substitution of penalty.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without any compensation for wages and benefits lost and without loss of seniority. The period of time from his termination to his reinstatement shall be recorded as a suspension for the purposes of his discipline record.

May 19, 2009

(signed) MICHEL G. PICHER
ARBITRATOR