

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

CASE NO. 3923

Heard in Montreal, Montreal, 11 January 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal the assessment of 10 demerits to Locomotive Engineer E. Buchan for "Failure to comply with instructions of a Company officer and abandoning your assignment on November 3rd, 2008."

JOINT STATEMENT OF ISSUE:

On November 2, 2008, Mr. Buchan was assigned as the locomotive engineer on train M34251 31 when he was required to yard his train at Symington Yard in Winnipeg, MB. Mr. Buchan was concerned about a violation of the Hours of Service Regulations and did not complete the yarding of his train due to his belief that he had reached the 18 hour limitation. After going off duty, Mr. Buchan departed the property.

The Company conducted an investigation of the incident and determined the grievor had failed to comply with the instructions of a Company Officer and that he had abandoned his assignment and was therefore subsequently assessed 10 demerits.

The Union contends that the Company did not take into account the mitigating circumstances surrounding the incident such as the confusion of the times between the Canadian and the United States Hours of Service regulations and that he was allowed to leave the property and did not abandon his assignment.

The Union finds that the discipline is unwarranted and excessive.

The Union requested the Company reconsider the discipline assessed and expunge or, in the alternative, reduce the discipline and compensate Mr. Buchan for all loss of wages and benefits.

The Company disagrees with the Union.

FOR THE UNION:

(SGD.) T. MARKEWICH
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. BRODIE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
J. Orr	– Assistant Vice-President, BC South
S. Bahl	– Assistant Superintendent, Transportation, Winnipeg
M. Rutherford	– Trainmaster, Winnipeg

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
T. Markewich	– Sr. Vice-General Chairman, Edmonton
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
E. Buchan	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, without doubt, that Mr. Buchan did abandon his work in circumstances where he was not entitled to. It appears that on the morning of November 2, 2008 he commenced work at 07:00, operating train 803 between Winnipeg and Rivers, Manitoba. After an off duty period in Rivers he and his workmate agreed to operate train 342 back to Winnipeg. It is not disputed that under the 18 hour rule of the Hours of Services regulations he was able to continue working until 02:40 hours on November 3, 3008.

Mr. Buchan was under a different impression. He and his workmate, Conductor Andy Jolicoeur, initially believed that they would be required to go on mandatory rest at 00:45 hours. However when Trainmaster Sanjay Bahl contacted the Company's Chief Rail Traffic Controller, it became clarified that the off duty hours of the employees at

Rivers would not count toward the eighteen hours, and that they could therefore continue working until 02:40 hours. However the grievor did not accept the Company's interpretation and effectively left the property.

There is some conflict as to whether the grievor was told by Mr. Bahl that if he did not agree with the interpretation of the rule he could call a cab and leave. The Company denies any such statement. I do not consider it necessary to resolve that conflict, in any event, as the statement, even if it was made by Mr. Bahl, does not amount to a concession that Mr. Buchan was correct in his interpretation of the rules and that on that basis he was free to leave the worksite. In my view it would be better understood as a caution that if he thoroughly believed in his interpretation of the rule then he should not work any further. That is not tantamount to saying that he would absolved of any responsibility if his interpretation was incorrect.

In the result, I am satisfied that the grievor did improperly abandon his assignment. I am also satisfied that the assessment of ten demerits for failing to comply with the instructions of a Company officer and abandoning his assignment on November 3rd, 2008 is within the appropriate range of discipline and should not be disturbed. The grievance is therefore dismissed.

January 17, 2011

MICHEL G. PICHER
ARBITRATOR