CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1920

Heard at Montreal, Thursday 11 May 1989

Concerning

ONTARIO NORTHLAND RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline of 30 demerit marks assessed Mr. Stephen Hunt for booking injured on August 31, 1988 at 0530 and failing to seek medical aid until September 7, 1988.

JOINT STATEMENT OF ISSUE:

On August 31, 1988, Mr. Hunt booked injured as a result of an alleged incident which occurred upon coming on shift at Englehart. The Company assessed Mr. Hunt 30 demerit marks for not seeking medical aid until September 7, 1988, resulting in Mr. Hunt being dismissed for accumulation of 60 demerit marks. The Union appealed on the grounds that Mr. Hunt collected Workman's Compensation for this period of being absent from work and that the discipline should be dropped from Mr. Hunt's record. The Company denied the appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) R. G. WHITE	(SGD) P. A. DYMENT
GENERAL CHAIRMAN	GENERAL MANAGER

There appeared on behalf of the Company:

M. J. Restoule	– Labour Relations Officer, North Bay
D. Harris	– Assistant Superintendent, Train Operations, North Bay

And on behalf of the Brotherhood:

R. E. White	– General Chairman, North Bay

AWARD OF THE ARBITRATOR

The material establishes that the grievor booked injured on August 31, 1988. By his own account he then obtained Form 7-B from the Yard Office. The 7-B is a multi-copied form which is to be filled out by an employee who books off as a result of a work-related accident. The white copy of the form is an advice to the employee's doctor, while three other copies are retained by the Safety Department, the department head and the employee's supervisor, respectively.

The material establishes beyond dispute that notwithstanding Mr. Hunt's reported injury of August 31, 1988, he did not see his physician until September 7th. It further appears that he did this only after speaking to Assistant Superintendent P.R. Harris on September 6, who then instructed him that he must obtain a medical certificate certifying his fitness to return to work. The status of the grievor's injury is further called into question by the undisputed evidence that on September 2, Mr. Hunt called to book back on duty and was advised at that time by the yard co-ordinator's clerk that he would need a medical certificate attesting to his fitness to return to work, since he had booked injured when he last left work.

As a participant in the Workers' Compensation scheme the Company is entitled to expect from its employees prompt disclosure of the circumstances of a work-related injury. It is also entitled to expect confirmation, at the earliest possible time, of the employee's medical status, including the nature and extent of his injury, by means of a certificate of a duly qualified physician. These requirements should be obvious, as employees making claims for Workers' Compensation benefits are plainly not entitled to do so on the basis of self-diagnosis.

The issue in this arbitration is not whether Mr. Hunt falsified an injury as a pretext to participate in a concerted work stoppage on August 31, 1988 (see **CROA 1911**). Nor is the Arbitrator required to deal with the *bona fides* of the grievor's Workers' Compensation claim which, it appears, is the subject of separate proceedings. For the purposes of this award it may be assumed that the grievor did suffer an injury to his knee on August 31, 1988. The issue then becomes whether he so conducted himself in respect of reporting and documenting that injury so as to justify the imposition of discipline and, if so, the appropriate measure of such discipline.

The Arbitrator must accept the position of the Company that the grievor in the instant case was under some obligation to have his injured knee examined by a physician within a reasonable time of the accident. This would have the twofold purpose of, firstly, providing supporting documentation in the event of a Workers' Compensation claim and, secondly, allowing for the proper medical assessment of the injury for the purposes of following its improvement to the point of certifying the grievor's ability to safely return to work.

The material reveals that Mr. Hunt, as early as September 1, 1988, viewed his injury as one which would be the subject of a Workers' Compensation claim. On that date he so advised Yard Co-ordinator's Clerk M. Levasseur by telephone. It was plainly inconsistent with the grievor's obligation to his employer for him thereafter to continue to fail to receive any professional medical attention with respect to the assessment and treatment of his injury and adequate documentary confirmation of his condition of August 31, before September 7 1988, and only then after two specific directives in that regard from the Company. I am compelled to the conclusion that the grievor's cavalier attitude with respect to obtaining medical attention in respect of his injury was contrary to his obligation to the Company and was such as to render him liable to discipline.

The issue then becomes the appropriate measure of discipline in the circumstances. It is trite to say that discipline must be assessed having regard to the specific circumstances of each individual case, taking into account not only the facts of the incident in question, but the service of the employee, including his or her prior disciplinary record. The material in the instant case reveals that the disciplinary record of Mr. Hunt has been far from exemplary over the eight years of his employment. In 1984 his disciplinary record reached forty demerits and in 1986 rose further to fifty-five demerits. In 1988, at the time of the culminating incident, Mr. Hunt's disciplinary record stood at forty-five demerits

The assessment of thirty demerits by the Company for the grievor's failure to obtain prompt medical documentation in respect of his injury placed him at the dismissable position of seventy-five demerits. In the Arbitrator's view it is unnecessary to determine whether that measure of discipline was excessive. It is sufficient to say that in my view the assessment of fifteen demerits for the grievor's misconduct in this matter, particularly in light of his prior disciplinary record, which involves at least one failure to submit a doctor's certificate to substantiate a sick leave in November of 1986, would amply justify the assessment of fifteen demerits. That would, by reason of the accumulation of demerits, still leave the grievor in a dismissable position.

For the foregoing reasons the Arbitrator sees no reason to disturb the discipline assessed by the Company or, in the absence of any compelling mitigating factors, to substitute a reduced penalty. For these reasons the grievance must be dismissed.

May 12, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR