CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2700

Heard in Montreal, Wednesday, 14 February 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS

EX PARTE

DISPUTE:

The assessment of a written reprimand to Conductor D. Powers effective April 21, 1992 for improper reporting of a workplace injury.

EX PARTE STATEMENT OF ISSUE

On April 21, 1992, the grievor was employed as a conductor on Road Switcher 574. Upon completion of duty at approximately 2300 hours, the grievor requested and filled out a 3903 Work Place Injury Form. Subsequent to the Company's investigation of the grievor's purported injury, he was assessed a written reprimand for improper reporting of a workplace injury.

The Union has appealed the severity of the discipline because the grievor was unfamiliar as to the proper submission of Company forms.

The Company has declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

R. E. Bateman	– Labour Relations Officer, Toronto
P. E. Marquis	– Labour Relations Officer, Toronto
M. Stock	– Labour Relations Analyst, Toronto
N. Davies	– Manager, Train Service, Sarnia
B. Hamilton	– Manager, Train Service, Sarnia

And on behalf of the Council:

G. F. Binsfeld	– Secretary/Treasurer, GCA, Fort Erie
M. P. Gregotski	– General Chairperson, Fort Erie
G. B. Anderson	– Local Chairperson, London
D. Powers	– Grievor

AWARD OF THE ARBITRATOR

The instant case concerns a written reprimand arising out of the incident more fully described in **CROA 2699**. Very simply, the record reflects that after he was advised by the Company that he would subject to a disciplinary investigation after a delay in switching at the Ford Plant, Talbotville, which resulted in the shut down of the customer's assembly line, the grievor filled out a 3909 Workplace Injury Form alleging an inability to perform work at the time in question, by reason of a workplace injury, namely stress. The Company takes the position that the grievor improperly reported a workplace injury in the circumstances, and was deserving of a reprimand.

On balance, while the Company's concern is understandable, the Arbitrator does not view this as a circumstance in which it was appropriate to discipline the grievor separately for his assertion of a condition of stress. Fatigue and stress are, in general substance, more or less the same condition which he asserted to MTS Hamilton as part of his original argument that he and his crew should be allowed to take a lunch break prior to switching the doors at the Ford Plant. In essence, therefore, it was part and parcel of the same course of action, and in my view should not result in a double penalty, beyond the thirty demerits already assessed against the grievor. To assess a separate reprimand in these circumstances, which in reality concerns a single incident, would be tantamount to placing the grievor in a position of double jeopardy.

For the foregoing reasons this grievance is allowed, and the Arbitrator directs that the reprimand be removed from the grievor's record.

February 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR