

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 282

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

The Brotherhood claims that Mr. Bertram Chubbs, Motorman, St. John's was the recipient of an unjust penalty when he was assessed one month's suspension, subsequent to a charge of "failure to conform with procedure resulting in careless checking and handling of large value shipment and shortage of \$1,000."

JOINT STATEMENT OF ISSUE:

On October 30, 1970, Mr. Chubbs was assigned to handle and deliver a shipment of coins to the Bank of Montreal and the Imperial Bank of Commerce.

Mr. Chubbs left the terminal without checking the money in to the truck and accompanied by CN Const. Malloy and Warehouseman Grade 2 J. Hearn proceeded to deliver the shipment to the two banks.

52 bags were delivered to the Bank of Montreal. One bag was missing when the delivery was completed to the Imperial Bank of Commerce. 81 bags were delivered to the Imperial Bank of Commerce.

On November 20, 1970, Mr. Chubbs was assessed a one month's suspension. The Brotherhood appealed the suspension claiming it unjust and requested Mr. Chubbs' reinstatement with all loss of wages.

The Company denied the Brotherhood request.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal
L. V. Collard – System Labour Relations Officer, Montreal
G. James – Labour Relations Assistant, Moncton
H. Peet – Employee Relations Supervisor, St. John's
J. Nicholson – Superintendent Express, St. John's

And on behalf of the Brotherhood.

E. E. Thoms – General Chairman, Freshwater, P.B.
M. J. Walsh – Local Chairman, St. John's
G. D. Noseworthy – Local Chairman, Argentinia

AWARD OF THE ARBITRATOR

There is no substantial dispute as to the facts. On the day in question the grievor was the Motorman assigned to deliver the money shipments from the shed at St. John's to certain banks in that city. He placed his truck at about 3:50 or 4:00 p.m. and went to the office of the Value Clerk. On leaving that office at about 4:10 p.m. he met the Fleet Supervisor, who instructed him to pick up a waybill for a shipment of bicycles. He did so, and by the time he had returned to the truck the transfer of the money was almost completed.

The grievor observed that the bags of money were not properly separated, and he so advised the Value Clerk. He did not check or count the bags, as he would normally have done, and signed a "cash sheet", presented by the Value Clerk, which listed only the Waybill numbers for the deliveries – he treated the shipment, in this respect, "as a regular shipment". He then left for the banks with the Railway Constable and Helper who had been present throughout the transfer. It was subsequently discovered that a bag of coin was missing.

The grievor did not follow with precision the procedures required of employees in connection with value shipments of this sort. The company referred to certain regulations which were not complied with, and I have no doubt that the grievor, as an experienced employee, used to handling value shipments, was aware of these regulations, and knew that he was not complying with them on the occasion in question. It seems clear, however, that on that occasion the gravest breach of the regulations had already occurred when the grievor returned to his truck to find that the shipment had nearly all been loaded in his absence, and had been loaded badly. The grievor had been detained by the supervisor's request, and I see nothing improper in his having complied with it promptly. If the supervisor knew that the loading of the value shipment was beginning, he may himself be said to have some responsibility in the matter, but this of course is not known. The primary responsibility appears to have been that of the Value Clerk, although it may be noted that the improper loading was carried on in the presence of a Railway Constable and a Helper.

Faced with this perhaps difficult situation the grievor, it seems to me, acted in such a way as to make it clear that he did not accept responsibility for what had been done. This would seem to be the effect of his treating it as "an ordinary shipment", and his signing the waybills only not a receipt for the particular amounts of the shipments. The alternative course, it seems, was for him to have insisted that the loading process begin all over again. This was what should have been done, and if the count was correct, the grievor should then have acknowledged receipt of the precise amount of the shipment in the proper manner.

The case is to be distinguished from that of the Value Clerk (see **Case No. 283**), for the grievor here failed to insist upon correct procedures in a situation caused by others, and not of his making. The money was at the time, in the truck. It would, he thought, be counted as it was delivered, and this would be the same as its being counted while the truck stood at the shed. This was clearly wrong, and the grievor could not, by signing the waybill only, divest himself of responsibility for carrying out his tasks in the proper manner. He was therefore subject to some discipline. In the circumstances, however, it is my view that the imposition of a one-month suspension on the grievor went beyond the range of reasonable disciplinary responses to the situation. Such a penalty is a very heavy one, and in the absence of a record of discipline which would call for sterner measures in his case, was, in my view, excessive.

It is my conclusion that the company did not have just cause to impose a one month's suspension on the grievor. He is entitled therefore to compensation for loss of earnings. In assessing such compensation, however, it must be borne in mind that some discipline could properly have been imposed on him. In my view, a suspension of one week would not have gone beyond the range of reasonable disciplinary responses to the situation. Accordingly, I award only that the grievor be paid, forthwith, compensation for three weeks' loss of earnings.

(signed) J. F. W. WEATHERILL
ARBITRATOR