

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 491

Heard at Montreal, Tuesday, January 14, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims that the Company unjustly discharged Motorman B. Hicks, Gander, Newfoundland.

JOINT STATEMENT OF ISSUE:

Motorman Hicks while delivering traffic also collected certain charges for the Company. He claims that he passed all collected monies to the Cashier. The Company claims that he did not account for ten waybills. Motorman Hicks claims he is not guilty of withholding any collected monies.

The Brotherhood claims that Mr. Hicks did not have a fair investigation, and while he reimbursed the Company the amount for the ten shipments, he did so in order to obtain his pay cheque and there is no evidence of intent to embezzle the Company out of funds.

The Brotherhood demands reinstatement of Mr. Hicks in accordance with Article 9 and compensation for all loss wages.

The Company has denied the Brotherhood's request.

FOR THE EMPLOYEE: FOR THE COMPANY:

(SGD.) E. E. THOMS (SGD.) S. T. COOKE

GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal

W. D. Agnew – Labour Relations Assistant, Moncton

T. R. Meaney – Terminal Traffic, Gander

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater

T. F. Snow – Local Chairman, Lewisport

R. Byrne – Local Chairman, Corner Brook

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AWARD OF THE ARBITRATOR

The issues in this case are whether the grievor was discharged for just cause, and whether a fair investigation was carried out in conformity with the requirements of the collective agreement.

To deal with the second point first, Article 9.2 of the collective agreement provides as follows:

9.2 Investigations in connection with alleged irregularities will be held as quickly as possible. An employee may be held out of service for investigation (not exceeding three days). He will be given at least one day's notice in writing of the investigation and of the charges against him. This shall not be construed to mean that a proper officer of the Company, who may be on the ground when the cause for investigation occurs, shall be prevented from making an immediate investigation. An employee may, if he so desires, have the assistance of one or two fellow employees, or accredited representatives of the Brotherhood, at the investigation. Upon request, the employee being investigated shall be furnished with a copy of his own statement, if it is made a matter of record at the investigation. The decision will be rendered within 28 calendar days from the date the statement is taken from the employee being investigated. An employee will not be held out of service pending the rendering of a decision, except in the case of a dismissible offence.

On June 3, 1974 the grievor was advised in writing that he was required to attend the following day at an investigation for "misappropriation of Company funds". This was proper notice within the contemplation of Article 9.2, and it did specify the charge involved. While the particulars of the charge were not specified, this was not made the subject of complaint, and the grievor did answer questions put to him at the hearing. It is true that his answers were, in effect, a general denial of wrongdoing, but there is no suggestion that his answers would have been different had he been given further details in advance of the hearing. I am satisfied that the grievor understood what the hearing was about, and I note that he was satisfied, at the conclusion of the hearing, with the manner in which it was conducted. The fellow employee who attended the hearing with the grievor was cautioned at the outset not to interrupt the proceedings. This was contrary to the Company's general policy in these matters, and I think it was an improper restriction of the grievor's right of representation. At the end of the hearing, however, the grievor was, as I have noted, satisfied, and the fellow employee did not suggest any subject he wished developed, although given the opportunity to do so. Although the situation is not identical with that in **Case No. 363**, the observations made there apply with equal force in this case. In my view, an investigation as contemplated by Article 9 was held; the question remaining is whether discipline was imposed for just cause.

The duties of the grievor included the collection of certain Air Express items at Gander Airport, the collection of the waybills therefor, the delivery of the shipments to their consignees, the collection, in some cases, of cash payment, and the accounting for the waybills and cash. Now in some cases freight and waybills were picked up at the Airport, delivery and collection was made to the consignee, and yet no waybills or shipping charges in respect of such deliveries appeared on the driver's settlement. There were thus shortages in the driver's accounting to the Company. A driver would, in tallying his cash against his waybills, be aware of such shortages, but they would not, in the normal course, be apparent to the Company (because of the rather lax method used, attributable at least in part to a lack of cooperation between the air and land carriers), in the normal course.

On the material before me, it would appear that the grievor had in fact made certain cash collections from consignees, but had not handed over that cash or the related waybills in the course of his regular settlements. The Union suggested a number of possible explanations for the Company's undoubted losses (it is not questioned that there were shipments which arrived at the airport and were delivered to consignees for cash which was never paid over to the Company.), including the possibility of forgery by other employees of the grievor's initials on certain waybills left at the airport and on receipts given to customers. The grievor did not, however, deny the delivery of certain goods for which no waybill (and no cash) was turned over to the Company. He did not suggest that the deliveries in question had not been made by him. And, it was discovered, he turned over money for some deliveries he had made with the exception of the Air Express shipments, which are susceptible to this practice.

On all of the material before me, the most probable conclusion is that in fact the grievor did make cash collections for certain air freight shipments, and that he did not turn over the cash or waybills in connection with these shipments. In the circumstances, it is my view that there was just cause for discharge, and the grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR