

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 732

Heard at Montreal, Tuesday, December 11, 1979

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Dismissal of Mr. J. Gallay.

JOINT STATEMENT OF ISSUE:

Mr. Gallay was dismissed from service for accepting monetary payments on behalf of an employee seeking employment with Canadian Pacific.

The Union contended that the circumstances did not warrant dismissal and requested that Mr. Gallay be returned to Company service without loss of seniority and other benefits.

The Company denied the Union request.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT

GENERAL MANAGER OPERATION & MAINTENANCE

There appeared on behalf of the Company..

R. M. H. Bennett	– Counsel, Montreal
L. R. Field	– Assistant Superintendent, Montreal Division, Montreal
J. R. Cuin	– Supervisor Labour Relations, Atlantic Region
D. Cardi	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

F. Cote	– Counsel-Montreal
W. T. Swain	– General Chairman, Montreal
D. Herbatuk	– Vice General Chairman, Montreal
J. Gallay	– Grievor

AWARD OF THE ARBLTRATOR

In the Spring of 1979, it was brought to the attention of the management of the Company that certain employees were demanding and/or accepting money in connection with the employment of new employees at the St. Luc Diesel Shop. The Company then began an investigation, which is still continuing. It has been found that this illegal practice existed at Glen Yard as well as at the St. Luc Diesel Shop. A number of employees have been discharged on account of their involvement in such a practice. The grievor's it seems, is the only case to have been brought to arbitration.

The evidence is that in 1974, when the grievor was a Senior Clerk at Glen Yard, he was approached by a Mr. Poliziani, a long-service employee, who worked there as a Mechanic's Helper. Mr. Poliziani sought the grievor's help in having his son hired as an apprentice. The grievor, according to the evidence, advised Mr. Poliziani that he was not responsible for employment. Mr. Poliziani persisted, however, and told the grievor that there would be something in the order of two hundred dollars in it for him if he would help. The grievor obtained an apprentice application form, and gave it to Mr. Poliziani for his son to complete. He later sent the completed form to Angus Shops for their consideration. He had no contact with any employment officer, and made no payment in furtherance of the application. Such at least is the evidence before me.

Subsequently, Mr. Poliziani's son was hired, and Mr. Poliziani approached the grievor and handed him an envelope. The grievor accepted it, and later opened it, finding it to contain two hundred dollars, which he kept for himself.

The grievor has also given evidence of a previous occasion when he received one hundred dollars in somewhat similar circumstances. He later said that he returned the one hundred dollars, saying he had only done a favour for a friend. There is no evidence, however, that the grievor had at any time made any payment or used any form of influence to procure employment for anyone.

On these facts – and it is important to emphasize that there are no other substantial facts implicating the grievor in a scheme to subvert the Company's employment program – it has not been shown that the grievor committed any offence against the Company itself, except that he improperly accepted money from a fellow employee. The grievor had no control over employment and it was necessary for Mr. Poliziani's son, like others, to attend and be subjected to the usual tests and employment procedures. It has not been shown that he was favoured in any way, or that the grievor sought to intervene on his behalf. If the evidence had established such conduct on the grievor's part, then of course he would be guilty of a very serious offence. There is, however, no evidence to that effect.

The grievor did, in my view, commit an offence against the employer in accepting money from a fellow employee in these circumstances. Again, however, there is no evidence that the grievor approached Mr. Poliziani or held out to him that he could perform any service for him. Had a case of deliberate fraud such as that been made out, again I would consider it a very serious offence. In the instant case, however, the evidence is that the grievor simply accepted money apparently given by Poliziani in the belief that the grievor had been helpful to him although, on the evidence, he had not. It may be observed that Mr. Poliziani himself appears to have made a deliberate attempt to defraud the Company. There is nothing before me as to any disciplinary measures which may have been taken with respect to him.

The grievor is an employee of some thirty years' service with no previous disciplinary record. It is apparent that, at the very least, he allowed a fellow employee to think that he could exercise some influence with respect to the employment of that person's son, and that he accepted money offered by the employee in that belief. This was, as the grievor knew, wrong. It was wrong morally with respect to the other employee. It was also, as I have noted, an industrial offence for which discipline could be imposed. In all of the circumstances, however, I do not consider that it was an offence for which discharge was justified as a penalty. It should be repeated here that it has not been proven that the grievor was in fact involved in a scheme to subvert the employment system.

While I consider that, in the circumstances of this case, the discharge cannot be upheld, I am nevertheless of the view that this is not a case in which the grievor should receive any compensation for loss of earnings. He has it seems, made an offer of reimbursement to Mr. Poliziani, which offer Mr. Poliziani has refused. Having regard to all of the circumstances, I make the following award: the grievor is to be reinstated in employment forthwith, without loss of seniority or other benefits, save only that he shall receive no compensation for loss of earnings. Further, as a condition of reinstatement the grievor shall make a donation in the amount of two hundred dollars to the United Community Fund (or equivalent) of Montreal.

(signed) J. F. W. WEATHERILL
ARBITRATOR