

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 763

Heard at Montreal, Tuesday, September 9, 1980

Concerning

CN MARINE INC.

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

The Union claims the discipline assessed Mr. F. Kirby, Purser, Newfoundland Services, was too severe and that Mr. Kirby should be reinstated in another position, preferably that of Assistant Purser.

JOINT STATEMENT OF ISSUE:

Following investigation in accordance with Article 23 of the Collective Agreement, Purser, Mr. Fred Kirby, was dismissed from the Company's service effective 19 February 1980 for misappropriation of Company funds and failing to follow proper procedures during his tour of duty 1-14 December 1979.

The Brotherhood requested that the discipline be reduced on the grounds that it was unduly severe. The request was declined by the Company.

FOR THE EMPLOYEE

(SGD.) W. C. VANCE

REGIONAL VICE PRESIDENT

FOR THE COMPANY:

(SGD.) G. J. JAMES

DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

N. B. Price	- Manager Labour Relations, Moncton
W. J. Nearing	- Senior Labour Relations Assistant, Moncton
Capt. J. M. Taylor	- Asst. Marine Superintendent, North Sydney
J. D. Sheehan	- Vessel Services Officer
J. M. Premont	- Deputy Chief, CN Police, Montreal
J. J. O'Connor	- Inspector, CN Police, Montreal

And on behalf of the Brotherhood:

W. C. Vance	- Regional Vice President, Moncton
G. MacIntyre	- Representative, Moncton
J. J. Parsons	- Local Chairman
H. Reddick	- Local Chairman, St. John's

AWARD OF THE ARBITRATOR

The instant case and the four which follow involve cases of alleged dishonesty. Each case turns on its own facts, although in certain of the cases a similar type of wrongdoing is alleged. Certain general questions were raised out at the outset of the hearing and what is said with regard to them in this award applies equally in each case.

It was argued by the Union that the investigations of the grievors were not held "as quickly as possible", since there are delays of from forty-four to seventy-eight days between certain of the observations made with respect to the grievors, and the disciplinary investigations of the charges against them. These delays were, I think, attributable to the nature of the cases. The Company had reason to suspect fraudulent action on the part of some employees, and arranged for constables from its Special Service Division to make unscheduled trips and to observe the conduct of employees. Time was required for the filing and analysis of their reports and the identification of the employees involved. Certainly the Company had nothing to gain by delay, as it was anxious to stop the losses it was suffering. What was said in **Case No. 302** applies equally in this case, I think:

The investigation of the matter seems to have been delayed somewhat, but there is no precise time limit for such investigations set out in the collective agreement. There has been no violation of any of the procedural provisions of the agreement, and it cannot be said that the grievor, who remained in the Company's employ until the time of his discharge, was prejudiced by any delay.

As to the evidence to be relied on, the Union objected to the admission of anonymous reports of investigating officers. The cases involve allegations and denials, and findings of credibility are necessary. In this regard, what is said in **Case No. 159** applies. In accordance with my ruling on this point, the Company did call the investigating officers, who were thus subject to cross-examination. There is, therefore, direct evidence of certain of the facts in issue.

As a final preliminary matter, it may simply be stated that the onus on the Company in cases such as these is to establish, on the balance of probabilities – but by clear and cogent evidence – that the grievors committed the offences alleged and that there was just cause for their discharge.

The case against Mr. Kirby revolves around one transaction, involving ticket No. 172943. That ticket was issued to a Company officer on February 1, 1980. Tickets consist of three coupons. The first, white, is the agent's audit coupon, which is to be retained by the issuing Purser and remitted to the Accounting Office. The second, yellow, is the passage coupon. The third, pink, is the passenger's receipt. The passenger's receipt of ticket 172943 shows the ticket as being issued for a cabin, and \$32.00 as being paid. When, subsequently, the passenger's receipt was compared with the audit coupon, it appeared that the ticket had been issued for dayniter accommodation, and that only \$2.00 was paid. This would suggest that the issuing purser had taken in \$32.00 for the accommodation given the passenger, but had only reported receipt of \$2.00, showing lesser accommodation as having been provided. There would thus have been an overage in the Purser's cash, but no such overage was reported. It appears that a number of tickets issued during the grievor's tour of duty revealed such discrepancies, but only one of these was the subject of proof.

The grievor did offer an explanation for the discrepancy. He stated that when he made out the ticket for cabin accommodation the first (white) sheet was missing. The books of tickets, he said, had fallen out of their pigeon-hole during rough weather, and some of the tickets had separated. The passenger thus got the passage coupon and his receipt, but there was no audit coupon. Later, the Purser was called to sell a dayniter, and when he made out that ticket, so he says, he found there were no copies attached. He therefore typed out a receipt and gave it to the dayniter passenger for \$2.00. He does not say how he dealt with the matter of a passage coupon for the dayniter. The effect of all this, on the grievor's account, is that two fares were issued using portions of one ticket: a \$32.00 fare for which the passenger had his receipt but for which there was no audit coupon, and a \$2.00 fare, for which there was an audit coupon, but for which the other coupons had to be made up. It would thus be a coincidence that the audit coupon showing a \$2.00 fare as having been issued, was part of the same ticket used for the issue of a \$32.00 fare.

Later, the grievor says, he discovered there was a \$32.00 overage. That would certainly be the result of what is described above. He says that he "reported" this overage by making out an additional cabin ticket, so that his cash would balance with the tickets issued. This was, obviously, an unverifiable and unacceptable method of accounting, as the grievor well knew. For that alone, even if it was innocent, the grievor would be subject to discipline.

I am, however, unable to accept the explanation offered by the grievor. First, the story of the separation of the tickets is an unlikely one, the reported weather conditions at the material times not being such as to cause the tickets to fall. Even if they did, their separation seems unlikely, but in any event, the several coupons do not indicate the sort of rough separation that would have occurred. Even if the audit coupon of ticket 172943 had come off, the grievor should not then have used the incomplete ticket. That he would not have realized what he was doing is unlikely, since he would be writing on a yellow, not a white, coupon.

While the foregoing suggests that the grievor's story is improbable, an examination of the ticket itself is even more convincing. Both the audit copy (on which the sale of a \$2.00 fare is reported) and the passenger's receipt (showing the sale of a \$32.00 fare) show a handwritten code, a date stamp, and the Purser's two punch-holes in exactly the same form and in exactly the same position. This could not have been the case had the coupons been dealt with separately as the grievor claims, except by a coincidence far too extraordinary to be believed. The only reasonable explanation of what occurred is that the grievor issued a ticket for a cabin and collected the \$32.00 fare, but only showed a \$2.00 fare on the audit copy, by which cash receipts would be reported. By such a manoeuvre the Company would be defrauded of some \$30.00 on this transaction.

For the foregoing reasons, I am compelled to conclude that the grievor not only failed to follow proper procedures but in fact misappropriated Company funds. For a person in a position of trust, there can be no doubt that this offence would justify his discharge. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR