

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 766

Heard at Montreal, Tuesday, September 9, 1980

Concerning

CN MARINE INC.

and

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

DISPUTE:

Dismissal of Mr. John H. Clarke, Assistant Bar Steward, effective March 24, 1980 for misappropriation of Company funds and improper procedures.

JOINT STATEMENT OF ISSUE:

Mr. Clarke was dismissed on March 24, 1980 from the service for misappropriation of Company funds and improper procedures during his tour of duty January 1-15, 1980.

It is the Union's position that if discipline was warranted, dismissal was too severe a penalty to be imposed.

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

Certain general matters relating to this case are dealt with in **Case No. 763**, and what is said in that award applies in this case as well.

The grievor, an Assistant Bar Steward, worked on the M. V. "Marine Nautica" from January 1 to January 15, 1980. On a number of occasions he was observed to ring up a smaller amount on the cash register than the amount actually charged for drinks served. While the grievor was not fully experienced or trained in bar sales, he certainly understood that the true amount of a sale was the amount to be recorded in the cash register.

The cash register is preset to permit punching of amounts based on the product sold, and whether the sale is made in port or at sea (the price varying according to jurisdiction). It would be possible of course for a mistake to be made, and the grievor explained that he would correct such a mistake by deliberately ringing up the wrong price at the next transaction, so as to make a cancelling mistake. The observations made at the bar were of several occasions on which the grievor rang up a low price rather than a high one, and he was not observed to place a nickel on the cash register (which he said he did as a reminder to make a cancelling error) on those occasions. Further, the grievor was observed on at least one occasion to receive cash without ringing up anything on the cash register.

The effect of all of this would be that there would be more cash in the till than was accounted for. No overage was reported, and the proper conclusion to be drawn is that the grievor not only followed improper procedures, but misappropriated Company funds. In the circumstances, discharge was justified. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR