

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 806

Heard at Montreal, Tuesday, January 13, 1981

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Dismissal of Stock Checker, B. Halligan, Toronto, for theft.

JOINT STATEMENT OF ISSUE:

On Sunday, May 18, 1980, during his tour of duty, Mr. Halligan was observed by CN Constable G. Holdsworth. Mr. Halligan went to his personal vehicle, removed an object from his coveralls and placed it in the back seat area of the vehicle.

He was approached by the constable who identified himself, and the constable then searched the back seat of Mr. Halligan's vehicle, and there found a quantity of Corporation's supplies.

Mr. Halligan was duly cautioned and requested to submit a written statement, to which he immediately consented. The constable then requested Mr. Halligan's permission to search the rest of his car, this was at first refused and then granted. During this search, additional supplies were found.

At the subsequently formal investigation, Mr. Halligan admitted to being in possession of Corporation's supplies and stated his regret at the incident. As a result of this investigation, he was discharged from the service of VIA effective May 18, 1980. The Brotherhood contends that dismissal is too severe a penalty for the offense, and has requested a reduction of the discipline. The Corporation has declined the grievance through all steps of the grievance procedure.

FOR THE EMPLOYEE:

(SGD.) J. D. HUNTER
NATIONAL VICE PRESIDENT

FOR THE COMPANY:

(SGD.) A. D. ANDREW
SYSTEM MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

A. Leger – Labour Relations Officer, Montreal
C. A. B. Henery – Human Resources Officer, Toronto
E. Fountain – Supervisor, C.D.C. Toronto

And on behalf of the Brotherhood:

F. C. Johnston – Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

There is no doubt that the grievor did steal or attempt to steal goods belonging to the Company. The only question is whether or not there was just cause for discharge.

The Union, in arguing that a period of suspension should be substituted for the discharge, relies most heavily on the fact that the grievor has had thirty-one years of service with the Company or its predecessor, and that he has a clear record. This is indeed a consideration which must be carefully weighed. While some Arbitrators have held that length of service is not a relevant consideration in cases of this sort, my own view is that it is a factor which must be taken into account.

In the instant case, however, it may be noted that the grievor spent most of his years of service with the predecessor Company, rather than with the recently-created present employer. In October, 1978, the employer cancelled the demerit marks then on its employees' records, in order to "dramatize the break with the past". At the same time, it was stated that the Company's "expectations for employee behaviour and standards of service will, if anything, be higher than before".

In any event, while I consider that length of service is a factor to be taken into account, it is only one of a number of factors to be weighed in assessing the appropriateness of discharge in cases of theft. Generally speaking, an employee who steals his employer's property is subject to discharge. Exceptions have been made in a limited number of cases. I think the common ground of most of those cases is that the theft was an isolated, anomalous act in the career of a person who has otherwise shown himself to be a good employee and a good citizen.

In the instant case the grievor, I find, acted deliberately in stealing a quantity of the Company's supplies. He himself estimated their value at thirty-five dollars, although the Company indicated at the hearing of this matter that the value was sixty-eight dollars. I make no finding as to this, except to note that taking even thirty-five dollars worth of goods should not be dismissed as "mere petty pilfering" to use the language of one of the cases referred to.

The grievor knew that what he was doing was wrong. He was apprehended when he was seen to approach his car and remove something from his coveralls. What he had been hiding was Company property, and when his car was examined, Company goods were found on the back seat under a blanket, on the front seat, and in the trunk. All of that suggests something more than a spur-of-the-moment act of foolishness. It shows a set of deliberate acts of theft. That such acts should be committed by a long-service employee is a very sad thing, but does not make the case an exception to the general rule that theft is grounds for discharge.

The Company has shown just cause for discharge, and the grievance must, therefore, be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR