

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 859

Heard at Montreal, Wednesday, September 9, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

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

DISPUTE:

Dismissal of Mr. William Drodge, Highway Motorman, effective October 27, 1980, for involvement in the theft of gasoline from Company owned vehicles at Corner Brooke, Newfoundland.

JOINT STATEMENT OF ISSUE:

Mr. Drodge was dismissed on October 27, 1980 for involvement in the theft of gasoline from Company owned vehicles at Corner Brooke, Newfoundland on October 2, 1980.

It is the Union's position that the discipline is too severe to fit the offense.

The Company maintains that the discipline was not too severe.

FOR THE EMPLOYEES:

(SGD.) M. J. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. A. Groome	– Labour Relations Assistant, Montreal
W. R. Brisbane	– System Labour Relations Officer, Montreal
B. J. Everard	– Employee Relations Officer, TerraTransport, St. John's
R. W. Armstrong	– Manager Distribution Services, TerraTransport, St. John's

And on behalf of the Brotherhood:

M. Walsh	– General Chairman, St. John's
R. Byrne	– Local Chairman, Corner Brooke

AWARD OF THE ARBITRATOR

There is no doubt that the grievor, together with another employee, engaged in a scheme to siphon off gasoline from a company vehicle for use in his own.

There was a deliberate act of theft of company property. While the grievor denied it in his first statement, he acknowledged in his second statement that he had stolen gasoline from a company vehicle, and indeed he was convicted and fined in respect of that offence. In view of the facts that the grievor acted deliberately and with preparation, and that he acted in concert with another employee, it cannot properly be said that this was a “spur of the moment act of foolishness”. Further, while the company may not always discharge employees who are guilty of theft, the propriety of discipline is to be determined on the facts of each case. The existence of a case or cases of apparently inconsistent administration of discipline does not prevent the company from imposing proper discipline where it is warranted. It cannot be said that the company has sought to discriminate improperly against the grievor.

There was, I find, just cause for the penalty imposed in the instant case, and no compelling grounds for reducing it. The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR