

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 861

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 D.E. Joseph, Motorman, effective December 3, 1980 for mishandling Company funds.

JOINT STATEMENT OF ISSUE:

Mr. Joseph was dismissed effective December 3, 1980 for mishandling Company funds.

It is the Union's position that the Company has not proven that Mr. Joseph did mishandle Company funds and that Mr. Joseph should be reinstated to service with compensation for loss of earnings.

The Company declined to reinstate Mr. Joseph.

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

The company alleges that the grievor collected cash for transportation charges in respect of certain deliveries, but did not pay the money over to the cashier. The grievor, a long-service employee with a clear record, denies any wrongdoing.

The grievor was shown documentation relating to some forty-two deliveries he had made during the period from July to November, 1980, which involved cash collections. The total amount said not to have been turned over to the company, was \$1,289.71. With respect to most of these, the material before me does not permit any finding as to whether or not the grievor in fact made the deliveries and collections, nor as to whether or not monies so collected were paid over to the cashier. There is, however, convincing evidence with respect to a delivery made on November 3, 1980, where the grievor received some \$34.00 from the customer, but did not include it in payments to the cashier. On that day the grievor's settlement with the cashier showed only credit accounts and no cash payments.

The company's conclusions were arrived at following a proper investigation although conclusive proof was made in only one case. A union representative was present when the two statements were taken from the cashier and from the clerk. Copies of these statements were requested by the union. A further statement, really in the nature of a reporting letter, from the District Manager is not evidence, but is simply a statement of the District Manager's own conclusions. It refers to a matter which appears not to have been raised at the investigation, and since it was not shown to the General Chairman (who had requested to be shown all evidence, pursuant to article 8.3), I agree with the union that it cannot be considered.

It is nevertheless the case that it has been shown that the grievor did fail to pay over money which he collected on November 3, 1980. The grievor reported no overage. That constitutes a mishandling of funds, and is grounds for discharge.

This offence is one of a very serious nature, as the cases have noted. While the grievor was a long-service employee with a clear record, his position involved responsibility for the handling of funds, and I am unable to conclude in all of the circumstances, that there are grounds for reducing the penalty. The grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR