CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 895

Heard at Montreal, Tuesday, December 8, 1981

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

EX PARTE

DISPUTE:

The dismissal of employee C. Walfall, Toronto, Ontario, for allegedly being accused of theft.

BROTHERHOOD STATEMENT OF ISSUE:

Employee C. Walfall was dismissed by the Company for allegedly stealing two tires from another employee's car.

The Brotherhood maintains the Company did not follow the grievance procedures as set out in Article VIII of the Agreement and further the charges were withdrawn by the Crown.

The Brotherhood claims employee C. Walfall should be reinstated and reimbursed for all monies lost while on suspension.

The Company refused the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. R. Smith	– Director, Industrial Relations, Willowdale
B. Neill	– Manager, Labour Relations, Willowdale
R. A. Colquhoun	– Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
G. Moore	– Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

The ex parte statement of this matter requires some clarification. The grievor was not "allegedly accused of theft", he was in fact accused of theft. Further, he was not discharged simply because he was accused (indeed, criminal charges against him had been dropped at the time of his discharge), but because the Company considered that the grievor had committed theft. As the notice of discharge put it, the grievor's employment was terminated "due to your involvement in the theft of two tires from the employees' parking lot".

At the hearing, the Union raised certain preliminary matters as to the admissibility of certain evidence, having regard to the investigation procedure, and the transcript, in which such evidence is not mentioned. This evidence, being the statement of a fellow-employee whose property the grievor was accused of stealing, was, however, attached to the statement of the grievor and was given to him; the fellow-employee was present during the first investigation of the grievor; and the substance of the questions put to the grievor was the same as that of the other employee's statement. In my view, all of the requirements of Article 8 of the Collective Agreement were met, and the material on which the Company seeks to rely is properly before me.

The material before me shows that there appeared on the grievor's car two tires which had been removed some time before from the car of the fellow-employee, while it was on Company property. It was on a fenced parking lot with controlled access. There is no doubt that the tires were the property of the other employee. They were, it appears, returned to him, and the grievor eventually made a payment to the other employee (who had laid a charge of theft), in respect of "costs incurred", although this payment was made on a "without prejudice" basis.

There is some doubt as to whether or not the grievor actually stole the other employee's tires. It appears to be by reason of difficulty of proof of intent (and also because the tires had been surrendered, and on other grounds as well) that the criminal charges against the grievor were withdrawn in court. There was no determination of guilt or innocence in those proceedings, which were of course of a quite different nature from those now before me.

On the material before me, I find, on the balance of probabilities (being the appropriate standard of proof) that the grievor was in fact "involved in the theft" of two tires, belonging to a fellow-employee. The grievor's position was that he had bought the tires from an auto wrecker. The chances that it should, by coincidence, be the very tires taken from a fellow-employee's car in the same parking lot are, in my view, slight. The probabilities of the situation are, I think, reinforced by the nature of the grievor's conduct and deportment in respect of the whole matter.

It is, therefore, my conclusion that the grievor was "involved" in the theft. Theft of a fellow-employee's property is, in my view, as serious an offence as is theft of the Employer's property, and some might consider it even more disgusting. Certainly the Employer has a proper interest in preventing or punishing such conduct, just as it would have an interest in preventing fighting among employees. The Employer has an obligation to provide proper working conditions, and while it may not be an insurer of employees' property brought on to its premises, it is entitled to take appropriate disciplinary action in cases of this kind.

This was, therefore, a proper case for the imposition of discipline and in my view the penalty of discharge was appropriate. The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR