

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 917

Heard at Montreal, Tuesday, March 9, 1982

Concerning

CN MARINE INC.

and

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

DISPUTE:

The Union claims the discipline assessed Herbert Sturge, Chief Steward, Newfoundland Services, was too severe.

JOINT STATEMENT OF ISSUE:

Following investigation in accordance with Article 23 of the Collective Agreement, Chief Steward, Mr. Herbert Sturge, was dismissed from the Company's service effective 23 October 1981 for misappropriation of Company funds, and gross negligence in the performance of his duties.

The Brotherhood appealed on the basis that there was insufficient evidence on which to discharge Mr. Sturge. The Company denied the appeal.

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
M. N. Butt – Marine Superintendent, St. John's
W. J. Nearing – Senior Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice President, Moncton
B. Lee – Local Chairman, St. John's

AWARD OF THE ARBITRATOR

The evidence in this matter shows that on several occasions in the course of a voyage, the grievor, a Chief Steward on a coastal vessel, made certain sales, usually of coffee or fruit, to passengers, without properly recording the sale. The money collected from passengers for the sales was placed in the cash register, but no entry was made in the cash register nor was any bill filled out. There was thus no record of the sale, and the Company's cash was not accounted for.

There would, as a result of such transactions, be more cash in the till at the end of the day or shift than was accounted for. No overages were reported.

It was the grievor's statement that he would, later in the day, prepare what were really fictitious bills to account for the amounts in the till. Thus there would be no "overages". This was not only contrary to the procedures of which the grievor was aware, but of course it was not really a method of accounting at all.

Evidence was put in as to the grievor's reputation for honesty and good character. It must be said, however, that such evidence is not properly admissible on the question in issue – any more than evidence of "bad character" could be accepted as some sort of proof that a grievor "probably" committed a particular offence. What must be decisive in this case is the contradiction in the grievor's own statement. While it might be that an employee did not take Company funds even although his failure to record transactions would have made it easy to do so (it would not appear that inventory controls would necessarily reveal that offences of this sort were taking place), the grievor did not come up with the explanation of his having fabricated bills to account for the cash in hand until faced with the evidence that he had not recorded transactions as they took place. Before that, he had stated that checks were issued for all transactions, except for cigarettes and soft drinks (it is not clear how these sales are accounted for; they would, I should think, be more easily subject to inventory controls). The grievor stated that he "didn't notice shortage on the cash register", that there were no overages, and that there was no occasion when the amount of cash in the cash register exceeded the amount of meal slips in the cash register at any time. This was simply not so.

On this evidence, it may be that according to the criminal standard of proof, the grievor would not be convicted of theft. On the balance of probabilities, however, it is my conclusion that the grievor did misappropriate Company funds. For that offence, he would properly be subject to discharge. The grievance is, therefore, dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR