

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 938

Heard at Montreal, Tuesday, May 11, 1982

Concerning

CN MARINE INC.

and

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

DISPUTE:

The Union claims that Mr. L.H. Coish, Chief Steward, Newfoundland Services, was wrongfully discharged and that Mr. Coish should be reinstated to his former classification without loss of seniority, and fully compensated for all loss of earnings and benefits.

JOINT STATEMENT OF ISSUE:

Following investigation in accordance with Article 23 of the Collective Agreement, Chief Steward, Mr. L.H. Coish was discharged from the Company's service effective 13 November 1981 for "failure to follow proper cash handling procedures and misappropriation of Company funds".

The Brotherhood requested the reinstatement of Mr. Coish without loss of seniority and with full compensation for all loss of earnings and benefits. The request was denied by the Company.

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

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton
L. H. Coish – Grievor

AWARD OF THE ARBITRATOR

The grievor was observed on certain occasions to conduct meal service transactions without recording them in the cash register. Typically passengers were provided with their food or drink orders, and with the bill. They then presented the bill, together with payment, to the grievor, acting as cashier. On the occasions referred to, the grievor would take the bill and put it to one side, take the money and, after giving change, place it in the cash register, but would not make any entry in the register.

It would be a result of this procedure that at the end of the day the cash in the drawer would not balance with the amounts registered. There would be cash overages. None was reported. The natural conclusion would be that the person having control of the cash register – in this case the grievor – took the excess cash for himself.

While such a conclusion may seem natural, it is not a necessary one. For one thing, it requires the assumption that because no entry was made in the cash register at the time of a transaction, no entry of the transaction was ever made. It was the grievor's evidence, however, that on the occasions when he did not enter a transaction at the time it occurred, this was due to the power to the cash register having failed. When the power was restored, he would then enter the transactions which had taken place.

Certainly, as has been noted in other cases involving alleged offences of this nature, such self-serving explanations should be viewed with some skepticism. From the material before me, however, it appears that in fact the cash register was on a circuit which was frequently overloaded, causing the circuit breaker to operate, and cutting the power. Power would be restored simply by pushing the circuit breaker in the engine room, a function which may very well not have merited entry in the engine room log. It may be noted that the only *viva voce* evidence in this case was that of the grievor himself.

It may also be noted that a partial control of transactions and of receipts would be available through the numbered bills. While it may be that on some occasions food or beverages were sold without a bill being made out, there would nevertheless be some control available through a comparison of bills with register entries. There was no evidence of this sort to support the case against the grievor.

While the observations of the grievor's transactions – sometime made at considerable distance – certainly raise a suspicion with respect to his handling of funds, it is my view that in this particular case the grievor has given a sufficient explanation of the matter. In the circumstances, it has not been shown that the grievor in fact took money belonging to the Company.

The case against the grievor is not made out, and the grievance is accordingly allowed. It is my award that the grievor be reinstated in employment forthwith, without loss of seniority, or other benefits, and with compensation for loss of earnings.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR