

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1060

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

On June 15, 1982, Mr. G. H. Babchuk, Extra Gang Foreman, was dismissed for misuse of Company gasoline supplies for personal gain at Sanctuary, Sask., June 6, 1982.

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that the discipline is too severe and Mr. G. H. Babchuk be reinstated with all his rights and compensated for loss of salary.

The Company denies the Union's contention and declines payment.

#### **FOR THE BROTHERHOOD:**

**(SGD.) H. J. THIESSEN**  
SYSTEM FEDERATION GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) R. J. SHEPP**  
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. D. Falzarano – Assistant Supervisor, Labour Relations, Winnipeg  
F. B. Reynolds – Supervisor, Labour Relations, Winnipeg  
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa  
F. L. Stoppler – Vice-President, Ottawa

## **AWARD OF THE ARBITRATOR**

There is no doubt that the grievor, as he admitted, took gasoline from the Company supply for his own use. He admitted taking 100 gallons, stated that he fell asleep while it was being taken (at 0530 on a Sunday), and undertook to repay the Company. It would appear that he did, subsequently, make a repayment.

The grievor had, previously, used his own vehicle for Company work, and had been authorized to refill his vehicle from the Company supply. The amount he took, however, greatly exceeded the amount to which he might have had any claim. The grievor stated that he "did not feel I was stealing the gas, as I intended to pay for it, when I could". Even accepting that there was no intention of "theft", there was quite clearly an unauthorized – and apparently surreptitious taking of the Company's property.

In my view, what occurred was the equivalent of theft, and while the grievor eventually made restitution, that was not done until the matter had come to light. The grievor was a foreman, and he misused supplies as charged. In my view, there was just cause for discharge in the circumstances. Accordingly, the grievance is dismissed.

**(signed) J. F. W. WEATHERILL**  
ARBITRATOR