

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1109

Heard at Montreal, Wednesday, June 15, 1983

Concerning

CANADIAN PACIFIC LIMITED

AND

UNITED TRANSPORTATION UNION

DISPUTE:

The dismissal of Trainman J. Forest.

JOINT STATEMENT OF ISSUE:

Following an investigation held on October 22, 1981, the Company dismissed Mr. Forest on November 9, 1981 for "taking customer's property while working on Assignment 208, October 12, 1981 at C.I.P. plant, Gatineau, Quebec".

The Union contends Mr. Forest was a victim of circumstance on October 12, 1981 and his actions did not warrant dismissal.

The Organization further requests that Mr. Forest be restored to Company Service with full seniority.

The Company declined the appeal on the grounds that the discipline assessed was proper and justified based on the evidence produced at the investigation.

FOR THE UNION:

(SGD.) B. MARCOLINI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

B. A. Demers – Supervisor, Labour Relations, Montreal
M. M. Yorston – Labour Relations Officer, Montreal
D. T. Cooke – Research Analyst, Montreal

And on behalf of the Union:

B. Marcolini – General Chairman, Toronto
J. Sandie – Vice-President, Sault Ste. Marie
A. Verner – Vice-General Chairman, Montreal
J. Forest – Grievor

AWARD OF THE ARBITRATOR

On October 12, 1981, at approximately 1615, the grievor was a member of a crew switching at the C.I.P. plant in Gatineau, Quebec. In addition to the engineer, there were a Conductor and two Trainmen (the grievor and a Mr. Brisebois), making up the crew.

The engine being outside the shed door, the grievor entered the shed and spoke to C.I.P. Supervisor to be sure the bridge plates between the shed floor and the car floor were removed. Meanwhile, Trainman Brisebois opened the track shed door, and coupled the engine to the cars on the track.

The engine was not moved for 10 to 15 minutes. After speaking to the C.I.P. Superintendent, the grievor returned to the engine. Trainman Brisebois was on the engine, with a door opened in the nose of the engine. He asked the grievor to help him load some rolls of plastic from underneath the loading platform into the compartment on the engine. The grievor did so. Shortly thereafter the engine pulled the cars out of the shed track, but the movement was stopped before it left C.I.P. property, the engine was searched and the rolls of plastic, which, it now seems clear were C.I.P. property, were found.

The Conductor had stayed at the main track switch when the movement went into the C.I.P. property. He was unaware of what had taken place, and did not know about the search of the train until afterward. He does not appear to have been disciplined in respect of the matter.

The Engineman stated that he was seated in the cab of the engine, facing away from the shed and reading a newspaper while the plastic was being stowed in the compartment. It seems he played no active role in the attempted theft. Although on these facts suspicion arises that the Engineman may have been aware of some unusual activity on his engine, he was not disciplined on that account, but was assessed twenty demerits for "inattention to duty".

Trainman Brisebois was discharged. He acknowledged that he knew the rolls of plastic would be underneath the loading platform, and that he had undertaken to remove them from the property for a C.I.P. employee. He knew they were being surreptitiously removed from C.I.P. Clearly, he willingly participated in the attempted theft of a customer's property, and while he appears to have filed no grievance, there would appear to be no doubt but that Mr. Brisebois was properly discharged.

As to the grievor, it appears from all of the material before me that he had no prior knowledge of the rolls of plastic or of any attempted theft. He was simply asked by Mr. Brisebois to give him a hand, and he did. It was, of course, very weak of the grievor to have done that, because it ought to have been obvious to him that Mr. Brisebois was attempting theft. The grievor asked no questions, although he ought to have.

What the grievor did was wrong, and certainly justified severe discipline. In the circumstances of this case, however, I am not satisfied that there was just cause for discharge. The grievor failed in his obligations as an employee and a citizen, but he did not participate in the planning of the attempt, and there is no suggestion that there was any profit in it for him (had there been such, discharge would certainly have been justified). The grievor had over eight years' service at the time, and a clear record. This was, I think, a case of momentary aberration, and while it was a very serious one was not one which, in the circumstances of this particular case, called for the penalty of discharge. A lengthy period of suspension would, I think, have been an appropriate disciplinary response.

Accordingly, and having regard to the circumstances of the particular case, it is my award that the grievor be reinstated in employment forthwith, without loss of seniority, but without compensation for loss of earnings or other benefits.

(signed) J. F. W. WEATHERILL
ARBITRATOR