

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1165

Heard at Montreal, Thursday, December 22, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer R. Cherrier, Montreal, Quebec, effective December 9, 1981 for theft and possession of Company material.

JOINT STATEMENT OF ISSUE:

Following an investigation Locomotive Engineer R. Cherrier was dismissed from the Company's service on December 9, 1981 for theft and possession of Company material.

The Brotherhood contends that dismissal was too severe a penalty and requests that Engineer Cherrier be reinstated.

The Company declined the request.

FOR THE BROTHERHOOD:

(SGD.) GARRY WYNNE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. L. FORTIN
ACTING GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

B. A. Demers – Supervisor, Labour Relations, Montreal
J. H. Blotsky – Assistant Supervisor, Labour Relations, Montreal
M. M. Yorston – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

G. Wynne – General Chairman, Montreal

AWARD OF THE ARBITRATOR

Mr. Réal Cherrier has been an employee of CP Rail for approximately forty years. He is married and he has five children one of whom still lives at home and is attending high school. During his career with the Employer he has been a good employee.

The evidence is not disputed in this case. Over a protracted period between 1967 and 1981 the grievor engaged in numerous acts of theft of Company property. Two CP investigators, having obtained a search warrant, found the following articles on the grievor's premises: 20 trainmen's oil-burning hand lanterns, 3 cold chisels, 3 one-gallon oil cans and 5 half-gallon oil cans. Mr. Cherrier has admitted his acts of theft in a statement taken by the investigators. On December 9, 1981 the grievor was discharged.

Without condoning the grievor's acts of theft the Trade Union argued that the grievor ought to be reinstated for essentially compassionate reasons. He is a man who has reached an age where he is unlikely, because of his misconduct, to find alternative employment. The articles he stole were of a trifling value and did not represent a substantial loss to the Company. Although he ought to have secured the permission of his superiors for removal of the goods and was aware of his responsibility in this regard, he should be given in light of the circumstances the benefit of a second chance.

The issue of whether arbitrators ought to direct the reinstatement of long service employees who engage in acts of theft of Company property is one of the most heart wrenching problems that we are obliged to deal with. But as in all disputes between an employee and his Employer the interests of both parties in the context of the industrial environment in which work is performed must be kept in balance. The interests of the employee in being treated in a fair, even handed manner must be balanced with the interests of the Employer in the efficient operation of its enterprise. Quite clearly, in theft cases, if compassion were the sole consideration for reinstatement then the grievor's interests would surely prevail.

That factor, however, is not the sole consideration. Mr. Cherrier, over a protracted period of time, engaged in acts of theft of Company property that, in themselves, may appear to have represented a trifling value to the Company. Incidentally, the evidence established in this regard, that some of the articles, such as the battery operated hand-lanterns, were not old, unused goods but were recently purchased items. Nonetheless, the grievor in having committed several acts of theft has committed a serious breach of trust that goes to the root of the employment relationship with his Employer. Because he can no longer be trusted his usefulness to the Employer, despite his otherwise exemplary capabilities, is minimal. Mr. Cherrier only admitted his misconduct upon being caught. He never came forward to request permission, when he knew this to be the Company's policy, to remove the articles or to otherwise purchase them. He thereby deliberately and knowingly placed his job on the line when he resolved to steal.

The Company cannot condone misconduct of this nature. In many respects in taking discharge action against the grievor the Company has rewarded its other employees who, like the grievor, may have been tempted but deferred, because of the serious consequences, from engaging in like misconduct. In short, in cases involving deliberate and calculated acts of theft the balance, notwithstanding the relevance of compassion, must be weighed in the Employer's favour. The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR