

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1436

Heard at Montreal, Thursday, November 14, 1985

Concerning

CP EXPRESS AND TRANSPORT LTD.

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

The dismissal of employee Harry Sexton, St. John's, Newfoundland.

JOINT STATEMENT OF ISSUE:

Employee Harry Sexton's services was terminated following an investigation which took place February 6, 1985. Employee Harry Sexton was charged with theft and/or possession of stolen goods occurring on or before October 4, 1984.

The Brotherhood grieved the dismissal stating the Company failed to prove the allegations and also maintained the Company violated Article 8 of the Collective Agreement. The Union requested he be reinstated with full seniority and benefits and also reimbursed all monies lost while held out of service.

The Company declined the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Wakely – Counsel, Toronto
C. Peterson – Counsel, Toronto
N. W. Fosbery – Director Labour Relations, Willowdale
E. Murphy – Regional Manager, Toronto
D. Cull – Terminal Manager, Toronto
W. Mercer – Constable

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw
M. Flynn – Vice-General Chairman, Vancouver
J. Bechtel – Vice-General Chairman, Toronto
J. Marr – Special Representative, Saint John
N. J. Whalen – Counsel, St. John's
H. Sexton – Grievor

AWARD OF THE ARBITRATOR

The uncontradicted and admitted evidence established that the grievor misappropriated for his own personal use four pairs of Levi Strauss jeans that he had removed from the company's warehouse premises in St. John's, Newfoundland.

The grievor did not take the stand to rebut this evidence or to otherwise provide an explanation for his unauthorized possession of the jeans. Indeed, I can attach no credibility to his excuse made during the Q. and A. procedure that he had lied about stealing the jeans to the attending police officer, Constable W. Mercer, and his Supervisor, Mr. D. Cull in order to protect a fellow employee.

In light of the uncontradicted viva voce evidence adduced through the company's witnesses, I am satisfied that the grievor engaged in theft and was properly and justly terminated for that cause.

In light of the above, I am not obliged to determine whether the grievor also committed the offence of being in possession of stolen property that was allegedly taken from the company's warehouse premises; namely, a colour television set and a set of drums and cymbals. But if I were so obliged I would find on the balance of probabilities that the uncontradicted evidence established that the grievor was knowingly in possession of the stolen merchandise referred to above. As such, he was vulnerable to discharge for that cause as well.

Based on the parties' undertakings made at the hearing they are to meet with a view to determining what compensation, if any, the grievor is entitled to with respect to the company's alleged violation of the investigation procedures provided under Article 8 of the collective agreement. I shall remain seized for that purpose.

In all other respects the grievor's discharge is sustained and his grievance is accordingly dismissed.

(signed) DAVID H. KATES
ARBITRATOR