

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1788

Heard at Montreal, Tuesday, June 14, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

By CN Form 780B dated October 10, 1986 Mr. C. Lalande, PIN #853785 was discharged effective October 20, 1986, for "Misuse of Company Credit Card for personal gain and violation of Company Rules and Procedures governing the use of Company vehicles".

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union admits that Mr. C. Lalande violated the Company's Rules and Procedures governing the use of Company vehicles by carrying a non-employee in a Company vehicle.

The Union contends the Mr. C. Lalande did not use a Company Credit Card for personal gain.

The Union contends that the Company is in violation of Wage Agreement 10.1 in that the discharge assessed Mr. C. Lalande is unjust, and claims for all wages, benefits and seniority lost as a result of the Company's actions.

The Company denies the Union's contention and declines their request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| R. Lecavalier | – Counsel, Montreal |
| T. D. Ferens | – Manager Labour Relations, Montreal |
| G. Blundell | – Labour Relations Officer, Montreal |
| A. Watson | – System Labour Relations Trainee, Montreal |
| M. Vaillancourt | – Engineering Coordinator, Montreal |
| Capt. J. Potvin | – CN Police, Capreol |
| D. G. Leavy | – Superintendent, Work Equipment Shops, Capreol |
| R. Paquette | – Senior Analyst, Montreal |
| D. V. Riddle | – Witness |
| M. Battaion | – Witness |

And on behalf of the Brotherhood:

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| M. Gottheil | – Counsel, Assistant to Vice-President, Ottawa |
| R. A. Bowden | – System Federation General Chairman, Ottawa |
| J. Periard | – Witness |

C. Lalande – Grievor

AWARD OF THE ARBITRATOR

The issue is whether on July 8, 1986 and on a number of prior occasions, the grievor knowingly defrauded the Company of sums of up to \$50.00 by misuse of a Company gasoline credit card.

The evidence discloses that on July 8, 1986 Mr. Lalande was assigned to drive a Company truck to an engine shop in Sudbury where he was to pick up a diesel engine to be delivered later that day to Tie Gang 42 working in Oba, Ontario, some four hundred miles away. It is common ground that after picking up the diesel engine the grievor stopped at Periard's Texaco Service Station in Sudbury to fill his truck with gasoline. The cashier then on duty was Ms. Millie Battaion, a person who had then been employed by Periard's Texaco for some two years as a cashier and bookkeeper.

Ms. Battaion testifies that Mr. Lalande proceeded to a self-service pump where he pumped \$50.00 worth of gasoline into his truck. When he came into the office, where the gas station proprietor Mr. Joe Periard was also present, he asked that the credit card receipt be filled out to reflect a purchase of \$100.00 in gasoline charged against the Company card, and that Ms. Battaion give him \$50.00 in cash, representing the difference. According to Ms. Battaion's testimony Mr. Periard instructed her to do as Mr. Lalande requested, noting that she should correct the credit card slip which she had already begun to fill out so that it reflected the litreage that would correspond to a \$100.00 purchase. Ms. Battaion relates that she did as instructed. It is common ground that thereafter, Mr. Lalande and Mr. Periard, who are friends, left the station together in the grievor's company truck and the grievor gave Mr. Periard a drive to Timmins en route to Oba, an act of gratuitous transport which is plainly contrary to Company rules.

Following an anonymous tip in respect of this incident the CN Police initiated an investigation. Ms. Battaion's evidence is that she was advised by Mr. Periard that she should not disclose the facts to the investigating officers, advice which she declined to follow. In two statements provided to the Company, consistent with her evidence at the arbitration hearing, she related the incident of July 8, 1986 and further elaborated that on some eight to ten prior occasions Mr. Lalande had done the same thing with respect to gasoline purchases, usually taking \$20.00 to \$30.00 in cash against ostensible gasoline purchases, always with Mr. Periard's approval. One of the incidents related by Ms. Battaion was corroborated in the further evidence of Ms. Diane V. Riddle, a former employee of Mr. Periard. She testified that during the summer of 1985 when she was at work, she was present when Mr. Lalande approached Ms. Battaion with a request to falsify the amount of gasoline shown on a purchase slip, providing him the difference in cash. At the hearing Ms. Riddle made no attempt to conceal her displeasure with what she witnessed on that occasion, as well as what she learned through Ms. Battaion with respect to the subsequent incident of July 8, 1986.

The grievor denies all of the allegations against him. His evidence is supported in that regard by the testimony of Mr. Periard, who likewise disclaims all knowledge of any fraudulent use of a Company credit card with his approval. The case therefore resolves itself into an issue of credibility as between the evidence of Ms. Battaion and Ms. Riddle on the one hand and that of Mr. Lalande and Mr. Periard on the other.

Counsel for the Brotherhood suggests that there are inconsistencies in the statements provided by Ms. Battaion which undermine the credibility of her evidence. With this the Arbitrator cannot agree. It appears that in her initial statement to the investigating company officer Ms. Battaion indicated that the cash obtained by Mr. Lalande was \$20.00 to \$30.00, and that there had been no prior incidents. In a subsequent statement, made at a time when it appeared to Ms. Battaion that she would be called to testify at a Company investigation, she further elaborated her initial account. Her second statement related her more precise recollection that the amount involved was \$50.00 and further incidents, usually involving \$20.00 to \$30.00 had occurred in the past. The Arbitrator does not see in these differences inconsistencies that substantially undermine the fundamental credibility of what Ms. Battaion has related. I accept her account that she did not, when first approached by the investigating officer, wish to implicate Mr. Lalande more than was necessary and that she was also motivated, in part, by a concern that she might be "hassled" by Mr. Periard.

I judge Ms. Battaion and Ms. Riddle to both be fair and credible witnesses whose accounts are consistent, measured and truthful. There is also one piece of objective evidence which weighs against the grievor. The purchase slip for the transaction of July 8, 1986, filled out by Ms. Battaion and signed by the grievor, does reveal some

alteration in the numbers registered with respect to the number of litres of gasoline purchased on that occasion. This further piece of evidence is more consistent with the account of Ms. Battalion, that she was asked by Mr. Periard to change the litreage shown on the slip, than with the evidence of the grievor who insists that he simply made a straightforward purchase of \$100.00 of gasoline. There are, moreover, no apparent reasons for either Ms. Battalion or Ms. Riddle to fabricate evidence of such a damning nature against Mr. Lalande, whom they knew only as an occasional customer at the gas station, or Mr. Periard. On the other hand, as counsel for the Company suggests, both the grievor and Mr. Periard would have ample reason to deny complicity in a fraud that could cost Mr. Lalande his job and would also jeopardize Mr. Periard's business standing.

For the foregoing reasons, on the whole of the evidence tendered, the Arbitrator is satisfied that the Company has discharged the onus which is upon it in this case. I am satisfied that both on July 8, 1986 and a number of prior occasions Mr. Lalande did make fraudulent misuse of the Company gasoline credit card in his possession. Given the continued pattern of his conduct, and that his actions were not a single isolated incident, I must conclude that his actions violated the fundamental trust essential to the employment relationship and that discharge was an appropriate disciplinary response in the circumstances. For these reasons the grievance must be dismissed.

16 June 1988

(signed) MICHEL G. PICHER
ARBITRATOR