

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2241

Heard at Montreal, Wednesday, 11 March 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Classified Labourer R.W. Abela for defrauding the Company by alteration of time documents.

JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Abela was "discharged from Company service account deliberately defrauding the Company by alteration of time documents", effective March 22, 1991.

The Brotherhood contends that the grievor was not afforded a fair and impartial hearing. The Brotherhood further contends that the grievor was unjustly dealt with and that, in any event, his discharge was unwarranted and too severe.

The Company disagrees with the Brotherhood's contentions.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) G. C. BLUNDELL
FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

G. C. Blundell – Manager, Labour Relations, Edmonton
D. F. Noyes – Labour Relations Officer, Edmonton
R. A. Brooke – Shop Supervisor, Prince George

And on behalf of the Brotherhood:

P. Askin – Representative, Vancouver
R. W. Abela – Grievor

AWARD OF THE ARBITRATOR

The evidence establishes, beyond controversy, that the grievor did manipulate the time clock to conceal the fact that he was late for work, on a number of occasions. While the evidence before the Arbitrator is not precise, it would appear that in the aggregate he would, in the result, have received payment for a total of some two hours for which he performed no work.

It is well established that the falsifying of time records is, absent mitigating circumstances, a dismissable offence. The Company submits that the actions of the grievor were deserving of discharge, and likens his case to that of another employee at Prince George, Electrician Apprentice B. Stevens, who was discharged for similar conduct, and whose grievance was dismissed in an arbitration award dated June 8, 1990 (**SHP-311**). In the circumstances, however, the Arbitrator accepts the submission of the Brotherhood's representative that there are distinguishing factors between the instant case and that of Mr. Stevens. Firstly, the grievor is an employee of some ten years' service, without any disciplinary blemish on his record, and the quality of his work is not in question. Mr. Stevens was a far more junior employee, with a questionable disciplinary record. At arbitration Mr. Abela has admitted his wrong-doing and expressed regret for his actions, while Mr. Stevens advanced a denial of the charges which the Arbitrator rejected.

It is arguable that the foregoing factors might not, in any event, be sufficient to tip the scales in favour of the grievor. There is, however, one further factor in mitigation which, in my view, must be seen as weighing heavily in favour of the reinstatement of Mr. Abela. That factor is the more favourable treatment of other employees at the same location, albeit in another bargaining unit, who committed similar transgressions and who were not discharged. The material before the Arbitrator establishes that in the relatively recent past a number of running trades employees were disciplined for the fraudulent submission of time returns, by the assessment of fifteen demerits. It is not disputed before the Arbitrator that in one such case the amount misappropriated was in the order of \$2,402.00, which is well in excess of the two hours' wages wrongly claimed by the grievor in the instant case. The material discloses that the lighter disciplinary penalties were assessed against locomotive engineers and, in one case, a yardman.

While boards of arbitration have consistently confirmed the seriousness of the falsification of time keeping records, they have applied with equal consistency the principle that like conduct should attract like discipline, and that discipline should therefore not be administered in a manner that is discriminatory. In the instant case, having particular regard to the length of service and prior disciplinary record of the grievor, coupled with the markedly different treatment of other employees found guilty of similar infractions, it is equitable to substitute a serious degree of discipline, but short of discharge. It should be emphasized that in so doing I am impressed with the candour of the grievor, his statement of regret and the prospects for rehabilitation in his particular case.

For the foregoing reasons the grievance is allowed, in part. Mr. Abela shall be reinstated into his employment without loss of seniority and without compensation.

March 13, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR