

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2287

Heard at Montreal Thursday, 15 October 1992

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Appeal of the discharge of Mr. J. Luckenuik.

#### **JOINT STATEMENT OF ISSUE:**

On May 9, 1990, Mr. J. Luckenuik worked as a trainman on Train No. 518 to Drummondville. He resided at 384 Proyard at Lefevbre, Quebec. At the home of Mr. Luckenuik, two CN Police Officers found property belonging to the Company with a value of \$803.00.

Following an investigation of the facts concerning this affair, Mr. J. Luckenuik was dismissed for "having taken, without authorization, Company matériel for your personal use." [*translation*]

The Union maintains that the discipline is too severe given the cooperation shown by Mr. Luckenuik and requests his reinstatement. The Company has declined the request.

#### **FOR THE UNION:**

**(SGD.) R. LEBEL**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) J. D. PASTERIS**  
FOR: VICE-PRESIDENT, ST. LAWRENCE REGION

There appeared on behalf of the Company:

O. Lavoie – Labour Relations Officer, St. Lawrence Regions Montreal  
J. D. Pasteris – Manager, Labour Relations, St. Lawrence Region, Montreal  
D. L. Brodie – System Labour Relations Officer, Montreal

And on behalf of the Union:

R. Lebel – General Chairman, Quebec  
B. Dubé – Vice-General Chairman, Quebec  
B. Wood – General Chairman, BofLE, Quebec  
J. Luckenuik – Grievor

### **AWARD OF THE ARBITRATOR**

It is not denied that Mr. Luckenuik is guilty of misappropriating Company property. The only question, therefore, is the appropriate level of discipline.

It appears to the Arbitrator that in the instant case there are mitigating factors which may be taken into consideration. The evidence shows that the items taken by the grievor, such as the pieces of chain, the boards used in the crating of merchandise and an exterior light fixture, were abandoned along the right of way. They appeared to have no value to the employer. The taking of these objects was made openly and without any attempt at concealment.

It is therefore, in my view, a matter of a lack of judgement on the part of Mr. Luckenuik, rather than deliberate dishonesty or a criminal act involving Company property. This misappropriation of goods does deserve a severe measure of discipline, but does not justify the conclusion that the bond of confidence between the employer and employee has been irredeemably broken. Given the grievor's long service and his discipline record, which was clear at the time of discharge, the Arbitrator deems it appropriate that the grievor be reinstated into his employment, without compensation for wages and benefits lost.

For the foregoing reasons the Arbitrator directs that Mr. Luckenuik be reinstated into his employment, without loss of seniority and without compensation.

October 16, 1992

**(Sgd.) MICHEL G. PICHER**  
ARBITRATOR