

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2372

Heard at Montreal, Wednesday, 9 June 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. M.B. Fisher for "Falsification of time records during Periods 12 and 13 of 1992".

BROTHERHOOD'S STATEMENT OF ISSUE:

At the time of the incidents in question, the grievor was an employee with more than 20 years of service with the Company. On May 29 and June 12, 1992 the grievor, in his capacity as Track Maintenance Foreman, filled out time sheets indicating that W. Ringer had worked when in fact he had not. In a time sheet for June 10, 1992, the grievor put in time for himself that he had not worked.

The Brotherhood contends: **1)** That on June 10, 1992, the grievor had gone to a doctor's appointment; **2)** That on May 12 and June 12, 1992, W. Ringer was absent visiting his son who was in hospital; **3)** That the grievor freely and openly admitted throughout the course of the investigation procedure that he had done wrong; **4)** That the grievor had more than 20 years of discipline free service with the Company at the time of the dismissal; and **5)** That the discipline assessed was unwarranted and too severe in the circumstances.

The Brotherhood requests: That the grievor be reinstated to his position.

The Company denies the Brotherhood's contentions and declines its request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

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|-----------------|---------------------------------------|
| J. E. Vick | - Labour Relations Officer, Moncton |
| G. B. Trenholm | - Track Supervisor, Moncton |
| N. Dionne | - Manager, Labour Relations, Montreal |
| C. J. McDonnell | - Solicitor, Toronto |

And on behalf of the Brotherhood:

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| P. Davidson | - Counsel, Ottawa |
| R. A. Bowden | - System Federation General Chairman, Ottawa |

AWARD OF THE ARBITRATOR

The facts of the case at hand are not in dispute. It is admitted that Mr. Fisher falsified his own time record in respect of June 10, 1992. It appears that he was required to absent himself from work for a period of approximately two hours to assist his daughter in attending an optometrist's appointment. He did not, however, reflect his absence from work from his time sheet, as he should have done. By his own admission, this was not an inadvertent error.

The evidence also discloses that Mr. Fisher filled out time sheets on two separate days indicating that employee W. Ringer was at work, when in fact he was on assigned vacation without pay. Mr. Fisher expressed the view, during the course of his investigation, that because the employee in question was absent as a result of the hospitalization of his son, he did not believe that he should be deprived pay for the two days. As the grievor put it, "... knowing this I thought he could use every break he could get."

The Company's concern is understandable. In all three instances the grievor substituted his own value judgments for those of the Company with respect to the entitlement to the payment of wages to himself and to another employee. This he did, admittedly, by falsifying Company time records. These were plainly fraudulent acts deserving of a serious degree of discipline. In the case at hand, however, there are grounds upon which to consider a reduction of the penalty.

Firstly, while the falsification of time records can be a dismissable offense, it is not always treated as such, depending on the facts and circumstances of the particular case. In prior cases considered by this Office railways, including the Company, have sometimes treated the falsification of time claims as deserving of demerits or suspensions, as opposed to dismissal. (*See, e.g., CROA 2165 and 2348.*) In the case at hand, the grievor's actions with respect to Mr. Ringer's two vacation days were obviously not motivated by an intention to profit himself. While his failure to report his own absence for two hours did work to his own advantage, it concerns a relatively minor infraction compared to those reflected in the cases cited above. Also, the mitigating factor of the grievor's long service to the Company must be weighed. While the material would suggest, contrary to the Brotherhood's assertion, that there is some prior discipline on the grievor's record, it is not disputed that his discipline record is not extensive, and that he has rendered twenty years of good service, sixteen in the capacity of Track Maintenance Foreman.

In all of the circumstances, the Arbitrator is satisfied that the reinstatement of the grievor, subject to a demotion to the position of Assistant Track Maintenance Foreman, in which he would be relieved of time keeping responsibilities, coupled with the substitution of an extensive suspension, is an appropriate measure of discipline. The Arbitrator therefore directs that Mr. Fisher be reinstated into his employment, with a demotion to the position of Assistant Track Maintenance Foreman, without compensation or benefits and without loss of seniority. The time between his dismissal and reinstatement shall be recorded on his record as a suspension for the falsification of time records.

June 11, 1993

(SGD.) MICHEL G. PICHER
ARBITRATOR