

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2435

Heard in Montreal, Thursday, 16 December 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Appeal the discharge of Trainperson D.P. Allt of London, Ontario.

JOINT STATEMENT OF ISSUE:

On September 24, 1991, Mr. Allt and two associates approached London Salvage and Trading Company Ltd. offering 1,230 pounds of copper line wire for sale.

The incident was reported and following an investigation of the matter, Mr. Allt was discharged from Company service for theft, possession and attempted sale of CN copper line wire effective February 4, 1992.

The Union appealed the discharge of Mr. D.P. Allt on the grounds that: **(a)** the grievor was not provided a fair and impartial investigation; **(b)** there were mitigating circumstances; and **(c)** the discipline assessed was too severe.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) A. E. HEFT
for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

R. Bateman	– Labour Relations Officer, Toronto
M. Brown	– Labour Relations Officer, Toronto
J. Campbell	– Assistant Superintendent Transportation, London
D. W. Coughlin	– Manager, Labour Relations, Montreal

And on behalf of the Union:

P. G. Gallagher	– Vice-General Chairperson, Sarnia
J. F. Orr	– Local Chairperson, London
D. P. Allt	– Grievor

AWARD OF THE ARBITRATOR

The evidence establishes, beyond controversy, that Mr. Allt was knowingly involved in a plan to misappropriate the Company's property, in the form of spools of copper wire, with a value in excess of \$1,000.00. Having regard to the lengths to which Mr. Allt and his accomplices went to falsify the circumstances surrounding the acquisition of the wire to facilitate its sale to a salvage company, the compelling inference to be drawn is that he was aware, or had substantial reason to believe, that the material taken belonged to the Company, and that he had no right to remove it for his personal gain.

The Arbitrator has little reason to doubt the suggestion advanced by the Union that the grievor is a young man who has learned a hard lesson. That is, to some extent, reflected in a letter which he directed to the Company in August of 1993 in support of his request to return to work. However, there are reasons why the Company is understandably reluctant to be compassionate. Firstly, the grievor is not a long service employee, having been in service only some three and one-half years at the time of the incident giving rise to his discharge. Secondly, and perhaps most unfortunately, his criminal record, apart from the conviction registered against him for the instant matter, also reveals two prior convictions. In the circumstances, there is, very simply, little basis upon which to mitigate the penalty assessed by the Company, particularly in a case which so obviously raises the issue of the grievor's trustworthiness.

For the foregoing reasons the grievance must be dismissed.

17 December 1993

(sgd.) MICHEL G. PICHER
ARBITRATOR