

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2471

Heard in Montreal, Wednesday, 13 April 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of the discharge of Mr. G.J. Patterson for unauthorized possession of Company property.

JOINT STATEMENT OF ISSUE:

CN Police received information that Mr. Patterson was in possession of property belonging to the Company and had said property stored at his residence in Oakville, Manitoba. On 28 May 1993, CN Police executed a search warrant at the residence of Mr. Patterson, including out buildings.

Following an investigation held 4 June 1993, Mr. Patterson was discharged for unauthorized possession of Company property.

The Brotherhood maintains that the property in question was somewhat job-related and that the Company did not take into consideration Mr. Patterson's age and 27 years of discipline-free service when the decision was taken to discharge him. With this in mind, the Brotherhood contends that Mr. Patterson was disciplined in an excessive and unwarranted manner.

The Brotherhood requests the Mr. Patterson be reinstated with full compensation and seniority.

The Company denies the Brotherhood's contention and declines the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNIEDER
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. HINKLE
for: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

J. Hinkle – Labour Relations Officer, Winnipeg

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa

G. Schneider – System Federation General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond any doubt, that the grievor did engage in the petty pilferage of property from the Company. The items found in his possession include work gloves, tools, small quantities of cleanser and items such as paper towels. I am satisfied that the element of misappropriation is established, and that the grievor was deserving of a serious measure of discipline.

In the case at hand, however, there are mitigating factors of note. Firstly, Mr. Patterson entered the service of the Company in 1966. Over his twenty-seven years of service he has never previously been disciplined for any infraction whatsoever. He is, by any measure, a long service employee with an impeccable disciplinary record.

A further factor to consider is the impact upon the grievor of his discharge. It is common ground that Mr. Patterson was due to retire in September of 1994. Because he was discharged in 1993, the pension which he would otherwise have received of some \$1,400.00 a month is reduced to \$700.00 a month, for the rest of his life. Upon a consideration of the entirety of the case, including the length and quality of Mr. Patterson's service, the Arbitrator cannot disagree with the submission of the Brotherhood that, in all of the circumstances, so great a personal financial penalty is disproportionate to the gravity of the grievor's misconduct. Without diminishing the seriousness of any misappropriation which would tend to undermine the bond of trust between employer and employee, I am satisfied that, in the case at hand, a remedial outcome can be fashioned which is more equitable.

The Arbitrator directs that the grievor be reinstated into his employment, without compensation or benefits for the period of time between his discharge and the date of his reinstatement. The grievor's reinstatement is conditioned upon his agreeing to retire from service as such point in time as his age and period of service entitle him to the level of pension income which he would otherwise have realized by retiring in September of 1994. For the purposes of clarity, should the grievor's period of suspension from service not constitute pensionable service for the purposes of the pension plan, Mr. Patterson shall be reinstated into employment on the condition that he take retirement when he reaches a point at which his pension income would be equal to that which he would have otherwise received in September of 1994, but for the suspension. Alternatively, should the terms of the pension plan be such that the period of his suspension is considered to be pensionable service, his reinstatement shall be conditioned upon his undertaking to retire in September of 1994, as originally scheduled. Should the parties encounter any difficulty in the implementation of this award the matter may be spoken to.

15 April 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR