

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2564

Heard in Montreal, Thursday, 15 December 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

Appeal of the discharge of Mr. R. Larouche, bridgeman, Victoria Bridge, for "having stolen gasoline belonging to CN".

JOINT STATEMENT OF ISSUE:

On January 17, 1993, Mr. Larouche was dismissed for having stolen the gasoline belonging to Canadian National.

The position of the Union is that the grievor should be reinstated into service without compensation given his years of service, his financial problems, having admitted immediately his wrongdoing and having offered to refund the Company for the gasoline.

The Company has rejected the appeal.

FOR THE UNION:

(SGD.) A. S. WEPRUK
NATIONAL COORDINATOR

FOR THE COMPANY:

(SGD.) D. C. ST-CYR
FOR: VICE-PRESIDENT, ST. LAWRENCE REGION

There appeared on behalf of the Company:

D. C. St-Cyr	– Manager, Labour Relations, Montreal
R. Foucher	– Labour Relations Officer, Montreal
P. Aumais	– Supervisor, Victoria Bridge, Montreal

And on behalf of the Union:

G. Brisebois	– Regional Coordinator, Montreal
A. S. Wepruk	– National Coordinator, Montreal
R. Larouche	– Grievor

AWARD OF THE ARBITRATOR

The evidence establishes that Mr. Larouche is an employee of 22 years' service whose of disciplinary file is exemplary. He has received only five demerit marks in all his years of service.

Mr. Larouche does not deny to have stolen a quantity of gasoline from the Company. When he was apprehended he immediately confessed all, and did not attempt to deny or conceal his acts, going so far as to admit to doing the same thing on several occasions, in the preceding month. It is agreed that when he bought gasoline for the Company truck he also filled a gasoline container which he transferred to his father's car, that served as his means of transportation. The gasoline thus taken for his personal use was paid for on the Employer's credit card.

It is well established that the penalty for such theft is generally discharge. The jurisprudence tells us that honesty is a key element of the relationship between employer and employee, and that the breaking of the bond of trust caused by a such act can justify the decision of the employer to put an end to the employment of the individual in question (see **CROA 806, 1165 and 1467**).

However, each grievance must be judged according to its own merits, in light of all pertinent factors. In certain exceptional circumstances, there may be a place to conclude that the bond of trust can survive the factors which brought about the discipline, and that the reinstatement of the employee to his or her employment is justified. For example, it could be that extraordinary pressures in the personal life of the employee brought about an aberrant conduct on the part of a person who, in general, is of reliable and honest character (see **CROA 1814**).

Such is the present case. It is agreed that Mr. Larouche, who is illiterate and dyslexic and who left school at age 11, has given exemplary service to the Company during 22 years. A short time before the events in question he found himself in a financial crisis which resulted in the loss of his personal vehicle which he was unable to replace. It became difficult for him to come to work, and even to visit his mother who is gravely ill, and his son who is in prison. It is agreed that Mr. Larouche, who is the father of six children, presented himself at the Employee Assistance Program to seek counseling for his financial problems, and that an officer of the Program put him in contact with an attorney. However these financial problems persevered as he was unable to sell the house which was the underlying cause of his problems. In the end he stole small quantities of gasoline in order to travel to work in his father's car.

The Arbitrator judges that Mr. Larouche is candid and honest concerning his actions, and the personal circumstances which had caused them. He demonstrates a sincere remorse for what he did. In light of these factors, of the quality of his long service to the Company, and of the fact that his financial problems are under control, the Arbitrator is of the view that in the particular circumstances of this case the bond of trust between the grievor and his employer can be re-established. Therefore I judge it appropriate to substitute a less severe disciplinary penalty.

The Arbitrator therefore orders that the grievor be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost.

December 16, 1994

(signed) MICHEL G. PICHER
ARBITRATOR