

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2616

Heard in Calgary, Tuesday, 9 May 1995

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

**EX PARTE**

**DISPUTE:**

Dismissal of employee B. Kehler for allegedly falsifying his application for employment with specific regard to his educational and criminal record.

**UNION'S STATEMENT OF ISSUE:**

On Friday, February 9, 1994, Mr. B. Kehler was dismissed for allegedly falsifying his application for employment dated October 3, 1989.

It is the Union's position that the alleged misrepresentation was innocent and not willful; that the alleged misrepresentation did not reflect upon the grievor's ability to competently perform his duties; that the alleged misrepresentation was genuinely motivated by mitigating circumstances and in no way caused any harm to the Company.

On the other hand, the Union contends that the Company's investigation into this matter was not genuinely motivated and is furthermore untimely. The Union is requesting reinstatement of the grievor with full wages and benefits during his time out of service.

The Company denies the Union's request.

**FOR THE UNION:**

**(SGD.) D. OLSHEWSKI**  
**FOR: NATIONAL COORDINATOR**

There appeared on behalf of the Company:

H. Koberinsky – Labour Relations Consultant, Toronto  
R. Strickland – Manager, Intermodal Services, Winnipeg

And on behalf of the Union:

D. Olszewski – Regional Coordinator, Winnipeg  
R. Storness-Bliss – Regional Coordinator, Vancouver

### AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that the Company discovered in late 1993 that the grievor made false statements in his application for employment, dated October 3, 1989. Specifically, he concealed a relatively extensive criminal record and misrepresented that he completed a university degree in biology, when in fact he had only completed some three years of a four year honours course.

The concealing of the grievor's prior criminal record is of the greatest concern. His criminal record, commencing in 1976 and ending in 1989, the year he was hired, includes convictions for theft, mischief, forgery, uttering forged documents, possession of goods obtained by crime, assault causing bodily harm and uttering threats. Indeed, it is doubtful that the grievor would have been hired in October of 1989 into the position of trainman, as he was then required to be bonded for work in the United States. It is questionable, at best, whether he would have received clearance for such work by U.S. Customs authorities.

The Union submits that the grievor's falsification of statements on his application for employment should not now result in his discharge. It brings to the Arbitrator's attention a number of authorities, and stresses in particular the decision of Arbitrator J.R.S. Pritchard in **Re Ralston Purina of Canada Inc. and Energy and Chemical Workers Union, Local 4**, (1982) 7 L.A.C. (3d), 45 as well as **Re McKenna and the Crown in right of Ontario (Ministry of Transportation and Communications)** (1980) 28 L.A.C. (2d) 410 (Swan) and **Re the Queen in right of Newfoundland and Newfoundland Nurses' Union** (1983) 8 L.A.C. (3d), 97 (Easton) and **Re British Columbia Rehabilitation Society - G.F. Strong Centre (Health Labour Relations Association) and Health Sciences Association of British Columbia**, (1993), 36 L.A.C. (4th), 415 (Hickling)

While the Arbitrator is not in disagreement with the general principles enunciated in the jurisprudence argued by the Union's representative, I have difficulty seeing the application of those principles in the case at hand. The grievor occupies a position of relative trust, having regard to the duties of the Company as a common carrier entrusted with the goods of its customers. In those circumstances his trustworthiness and good character are of primary concern to the discharge of his duties and to the Company's reputation with its customers. Unfortunately, the grievor's prior record, reflected in part in a prior award of this Office (**CROA 2614**) contains cause for concern as to the grievor's honesty and integrity in his relations with the Company and other employees. Of particular concern is evidence establishing that the grievor threatened another employee in an attempt to obtain a false written statement from him in an unrelated disciplinary matter. If this were a case which disclosed a lengthy period of exemplary service and high integrity on the part of the employee, the considerations relating to the balancing of employee and employer interests discussed in the jurisprudence cited above might have some compelling weight. Unfortunately, the record is otherwise. The Arbitrator is compelled to conclude that, upon discovering the false statements made by the grievor in his application for employment, in light of evidence of further dishonesty during the course of his service, regard being had to the trust implicit in the position which he occupied, it was justified in terminating his employment.

For all of the foregoing reasons the grievance is dismissed.

May 18, 1995

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