

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2698

Heard in Montreal, Wednesday, 14 February 1996

concerning

**CANADIAN PACIFIC RAILWAY LIMITED**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(UNITED TRANSPORTATION UNION)**

### **DISPUTE:**

The dismissal of Conductor D.C. Fish of Medicine Hat, Alberta, June 10, 1993.

### **JOINT STATEMENT OF ISSUE:**

Conductor D.C. Fish of Medicine Hat, Alberta, was dismissed from Company service on June 10, 1993 for "... dishonest and untrustworthy conduct as evidenced by you unauthorized removal and possession of Company property, and conduct incompatible with your employment as evidenced by you involvement with the possession of narcotics, and subsequent charge under the Criminal Code for the possession of a narcotic; at Medicine Hat, Alberta, May 15, 1993."

The Union contends that there are extenuating circumstances to both charges as identified in the Company's reasons for dismissal and they have requested that Mr. Fish be reinstated into Company service forthwith, without compensation or benefits, but without loss of seniority.

The Company has refused the Union's request.

### **FOR THE COUNCIL:**

**(SGD.) L. O. SCHILLACI**  
**GENERAL CHAIRPERSON**

### **FOR THE COMPANY:**

**(SGD.) L. J. GUENTHER**  
**for: GENERAL MANAGER, OPERATIONS & MAINTENANCE**

There appeared on behalf of the Company:

L. J. Guenther	– Labour Relations Officer, Vancouver
M. E. Keiran	– Manager, Labour Relations, Vancouver
A. Bittle	– Detective Sergeant, CP Police, Calgary
G. E. Johnson	– Manager, Operations, Medicine Hat

And on behalf of the Council:

L. O. Schillaci	– General Chairman, Calgary
B. L. McLafferty	– Vice-General Chairman, Moose Jaw
D. C. Fish	– Grievor

### AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes, on the balance of probabilities, that Conductor Fish did misappropriate a Company portable radio, valued at some \$1,400.00, without authorization or justification. The Arbitrator does not accept the explanations and excuses offered by Mr. Fish in respect of the reasons for his possession of the radio, found concealed in a drawer at his home on the occasion of a search conducted by police on or about May 15, 1993. It appears that in the course of the same raid a small amount of cannabis resin and cannabis oil were also found, as well as a Coca-Cola display clock stolen from a local business. The grievor was subsequently convicted, for the theft of the portable radio, of the offence of possession of stolen goods of a value in excess of \$1,000.00, contrary to section 355(A) of the **Criminal Code of Canada**. The charges of drug possession against him were not successful, and the charge in relation to the possession of the stolen clock was reduced to a conviction, upon a guilty plea, of mischief, under section 430(4) of the **Criminal Code of Canada**. It appears that the grievor was fined \$115.00 in relation to the charge of mischief, and that he was given a suspended sentence for the theft of the portable radio, being placed on two years' probation.

On behalf of the grievor, the Council argues that the events in question were related to an unfortunate life-style which then governed Mr. Fish's behaviour, stressing that he has since reformed his ways, being no longer involved in the possession or the use of drugs, or indeed the consumption of alcohol. It also suggests that his possession of the stolen radio should be understood as being in the nature of a colour of right, in that he says that he intended to return it to the Company. Stressing that the grievor's service to the Company extends back to September of 1979, and that his prior disciplinary record was reasonably good, the Council's representative submits that this is an appropriate case for a substitution of penalty.

Regrettably, the Arbitrator cannot agree. A number of decisions of this Office, and other boards of arbitration, have stressed the importance of trust as the touchstone to a viable employment relationship. Deliberate acts of theft are, absent extraordinary circumstances, generally viewed as meriting dismissal, as they involve a breach of the link of confidence that is essential to the employer-employee relationship. In the instant case, the Arbitrator might not disagree with the Council that the evidence of the casual involvement of the grievor in the possession of a relatively small amount of cannabis, at his home in a non-work related setting, might not, of itself, justify his termination for reasons touched upon in **CROA 2209** and **2683**. The same cannot be said, however, of the breach of trust which has occurred by reason of the grievor's theft of a valuable portable radio. While it may be that at present such radios are in fact permitted to be in the possession of employees at their homes, that was clearly not the rule at the time Mr. Fish took the Company's radio. The Council's characterization of his actions as being "ahead of his time" is more imaginative than persuasive. Nor can the Arbitrator find any violation of the Company's obligation to provide the grievor with the benefit of a fair and impartial investigation by reason of information in the hands of the CP Police, not known to the Company officers responsible for conducting his investigation.

In the result, for all of the foregoing reasons the grievance must be dismissed.

February 16, 1996

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