

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2755

Heard in Montreal, Wednesday, 10 July 1996

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

**EX PARTE**

### **DISPUTE:**

The discharge of Mr. Zénon Dufresne.

### **UNION'S STATEMENT OF ISSUE:**

On November 21, 1995, Mr. Z. Dufresne was arrested by the Transit Police of the *Société des Transports de la Communauté Urbaine de Montréal*. On November 22, 1995, Mr. Z. Dufresne was arrested again by the Investigation Department of Canadian Pacific. On November 22, 1995, Mr. Zénon Dufresne was given an administrative lay off following his arrest.

On November 28, 1995, Mr. Dufresne attended a disciplinary investigation for having stolen the goods, more precisely 4 subway transfers, belonging to a customer, being in possession of stolen goods and having fraudulently used the goods of a customer.

On December 13, 1995, Mr. Dufresne was discharged.

On February 20, 1996, Mr. Dufresne was acquitted of the three charges pending against him; having stolen the transfers, having in his possession said tickets and having conspired to commit a summary infraction, in the Court of Quebec.

On March 7, 1996, Unemployment insurance Commission unanimously granted the appeal of Z. Dufresne.

The Union contends that Mr. Zénon Dufresne used the four transfers, given to him by another employee, in good faith, having no doubt as to the origin of the tickets.

Considering the acquittal of Mr. Dufresne of the charges against him before the Court of Quebec (Criminal Division), the Union considers that he should be reinstated into his employment at CP Rail forthwith, without loss of wages and benefits, and with full seniority.

The Company denies the grievance.

### **FOR THE UNION:**

**(SGD.) N. LAPOINTE**

**FOR: EXECUTIVE VICE-PRESIDENT**

There appeared on behalf of the Company:

J-L Durand	– Directeur, Bâtiments, Montréal
G. Derdérian	– Superviseur, Entretien ménager, Montréal
D. Senez	– Spécialiste, Service à la clientèle, Montréal

A. Y. de Montigny – Agent, Relations syndicales, Montréal

And on behalf of the Union:

R. Pagé – Vice-Président Exécutif, Montréal  
N. Lapointe – Vice-Président Adjointe de Division, Montréal  
R. DesGrosellers – Président du Local, Montréal  
M. Mainville – Secrétaire Exécutive de Division, Montréal  
Z. Dufresne – Plaignant

**AWARD OF THE ARBITRATOR**  
**(translation)**

It is not disputed that Mr. Dufresne was in possession of metro transfers to which he was not entitled. Those tickets were given to him by his brother-in-law, who is also an employee at Windsor Station. According to his evidence, which the Arbitrator judges to be honest, the latter told him that the transfers had been given to him by the station master (in reality a train conductor, and that he had permission to use them.

The Arbitrator judges that if Mr. Dufresne did not have precise knowledge of the dubious origins of these transfers, he is proven to be very naive, and certainly irresponsible, not to have inquired more closely about where they came from, or to not have obtained for himself a confirmation of their legitimacy from the Company. But, in the end, I am persuaded that his error represents a failure of judgement rather than a dishonest intent, which merits, nevertheless, a certain measure of discipline. I am also of the opinion that the Company over reacted, given the particular circumstances which surrounded the role of Mr. Dufresne in this affair. This is a case of an employee who has never been disciplined, for any reason whatever, during nineteen years of service to the Company and who has always proven to be honest in the past.

On the whole, I judge that there was an error of judgement on both sides. Therefore, the grievance is allowed, in part. The Arbitrator orders that the grievor be reinstated into his employment, without loss of seniority, and with compensation for one half of his wages and benefits lost since the time of his discharge.

July 12, 1996

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