

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2771

Heard in Montreal, Thursday, 12 September 1996

concerning

INTERLINK FREIGHT SYSTEMS INC.

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The Company termination of employee C. Dhanraj for allegedly stealing two jugs of motor oil.

JOINT STATEMENT OF ISSUE:

The Union contends that on or about March 1, 1996, the Company terminated Mr. Dhanraj after a hearing was conducted and no concrete evidence was presented as to the facts the jugs in question were full or empty at the time.

The Union throughout the grievance procedure requested he be put back to work with full compensation for all wages and benefits lost.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) G. RENDEL
ASSISTANT VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) B. F. WEINERT
DIRECTOR, EMPLOYEE RELATIONS

There appeared on behalf of the Company:

M. D. Failes	- Counsel, Toronto
B. F. Weinert	- Director, Employee Relations, Toronto
F. McQuaid	- Garage Manager, Obico, Toronto
P. Leckey	- Manager, Linehaul Administration, Toronto

And on behalf of the Union:

D. Ellickson	- Counsel, Toronto
R. Nadeau	- Assistant Vice-President, Quebec
I. Murrell	- Witness
C. Dhanraj	- Grievor

AWARD OF THE ARBITRATOR

The grievor was discharged for allegedly having stolen two containers of motor oil. In a matter such as this the burden is upon the employer. To the extent that the conduct alleged involves quasi-criminal conduct, the standard of proof, according to established jurisprudence, is a requirement of clear and cogent evidence.

There are grounds for concern as to whether the Company's evidence meets that standard. The record discloses that the grievor was observed leaving the Company's Obico Terminal after placing two black, plastic jugs into his car. He was not then stopped or searched. Rather, after he had driven off the premises he was stopped in his vehicle by the P&D Manager, Mr. Allen Bailey, and asked to return to the terminal, to speak with Garage Manager Fred McQuaid. There is some conflict between the parties concerning whether the grievor did in fact return. He claims that he did, and that Mr. McQuaid was not available when he looked for him. The grievor's account of his having returned to the terminal is confirmed by the testimony of another employee, Mr. Israel Murrell, who states that he saw the grievor return to the workplace during the evening shift of March 1, 1996. The Company counters that Mr. Bailey and Mr. McQuaid awaited the grievor, without seeing him, in the Company office.

With respect to the possession of stolen goods by the grievor, there is no direct evidence advanced by the Company. It appears that during the day shift Garage Foreman McQuaid noticed two black plastic soap jugs in the back of a unit in the southeast corner of the shop. Upon inspection he found that the soap containers had been filled with engine oil, causing him to suspect that they were being utilized to pilfer engine oil from the garage. Accordingly, arrangements were made to have the area surrounding the garage observed by supervisors at the end of the shift, at approximately 3:30 p.m. It is at that point that the grievor was observed placing two black plastic jugs on a forklift outside the garage, and shortly thereafter placing them in his car. When asked later to explain his actions, the grievor related that he utilized the containers, as it appears other employees do, to dispose of dirty oil from his own car in the Company's oil disposal facility. Consequently, he states, he was merely taking home empty jugs which he had used for that purpose.

The Company is extremely dubious of the grievor's explanation. It points to the grievor's questionable account of having used a plastic container of oil to transfer oil into a Company truck being serviced that day, and what it maintains is the doubtful explanation of his failure to return to the terminal to meet with Mr. McQuaid, in support of its view that in fact he did steal two containers of oil on the day in question.

At best, the entire evidence of the Company is circumstantial. There is, very simply, no evidence before the Arbitrator to confirm that Mr. Dhanraj was ever in possession of two containers of clean oil taken from the terminal. While the Arbitrator can appreciate the circumstances which caused the Company to suspect the grievor's actions, as has been said before, boards of arbitration cannot convert mere suspicion, however strong, into legal conclusions which must be based on clear and cogent evidence. On the whole of the evidence I cannot find that the burden of proof upon the Company has been discharged, or that it has established that the grievor was responsible for the theft of oil on the day in question.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the grievor be reinstated into his employment with compensation for wages and benefits lost, and without loss of seniority.

September 14, 1996

(signed) MICHEL G. PICHER
ARBITRATOR