CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3042

Heard in Montreal, Wednesday, 14 April 1999

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The discharge of Mr. R. Grenier for allegedly committing fraud by falsifying his time cards.

JOINT STATEMENT OF ISSUE:

Mr. Grenier, at his formal investigation, held in compliance with article 23 of the Intermodal Supplemental Agreement, on December 30th, 1997, denied any wrongdoing and any knowledge with regards to some 115 irregularities on his time cards between October 1996 and September 1997. The Company discharged Mr. Grenier effective January 23, 1998.

It is the Company's position that Mr. Grenier did, purposefully, falsify his time cards and, in doing so, defrauded the Company.

It is the Union's position that Mr. Grenier's actions did not amount to time card fraud. The Union requests that Mr. Grenier be reinstated with full compensation and benefits.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. JOHNSTON	(SGD.) K. LAVIOLETTE
PRESIDENT, COUNCIL 4000	FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

A. C. Giroux	– Counsel, Montreal
K. Laviolette	– Manager, Labour Relations, Montreal
P. LaRocque	– Supervisor, Montreal
M. Vachon	– Sr. Terminal Coordinator, Montreal
R. Plamondon	– Investigator, CN Police, Montreal
R. Dagenais	– Operations Supervisor, Montreal
G. Chartrand	– Operations Coordinator, Montreal
J. P. St-Jean	– Operations Supervisor, Montreal

And on behalf of the Union:

A. Rosner	– National Representative, Montreal
J. Savard	– Officer, Negotiating Committee, Montreal
G. Verdi	– Local Secretary, Montreal
D. Boiteau	– Local President, Montreal
J. Plourde	– Witness
J-M Theoret	– Witness
P. Gariepy	– Witness
C. Perron	– Witness
R. Grenier	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor, Mr. Robert Grenier, falsified his time cards while in service as a heavy equipment operator at the Company's Monterm Intermodal facility. He did so by manipulating his time card by the use of post-it notes to separately record the hours and minutes recorded when he left work. He would, for example, record the minute portion of his departure time during his lunch break, masking the hour segment with a post-it note. Thereafter, he would leave work perhaps twenty minutes early, by masking the minute segment of the card with a post-it note, and inserting the card to obtain a print of the hour. By so doing he could construct a time card which shows a departure time of 22:54 when, in fact, he might have left the premises twenty minutes prior to that time.

As a general rule it is well established that the falsification of time records by an employee constitutes a violation of the bond of trust essential to the employment relationship. Absent compelling mitigating circumstances, such conduct would justify the termination of an employee for conduct analogous to theft. (See, e.g. **CROA 461, 478, 899, 1472, 1474, 1835, 2280** and **2304**.)

In the instant case, however, there are mitigating circumstances to be considered. The grievor is an employee of twenty-nine years' service with a virtually unblemished prior disciplinary record. Significantly, the Union has adduced in evidence statements from a number of employees which confirm, to the satisfaction of the Arbitrator, that for a number of years the practice of employees and first line supervisors at the Monterm facility with respect to timekeeping was marked by the toleration of considerable laxity in respect of practices concerning the punching out of employees' time cards. Part of the practice consisted of a designated employee staying to the end of the allotted shift to punch the cards of a number of other employees who had in fact left the workplace, with the knowledge and/or tacit approval, if not expressed approval, of their supervisor.

It appears that the practice emerged by reason of one aspect of the operation of the Monterm facility. Employees such as the grievor, employed in the operation of heavy equipment in the intermodal yard, were picked up from their yard work site and transported via mini bus to the yard office at or about 14:30 in anticipation of leaving the workplace at 15:00. They would be transported to the office where clean up facilities, a cafeteria and the punch clock are located. It appears that supervisors allowed employees to leave directly, rather than wash up and wait in the cafeteria for the appropriate time to punch out. The employees in that circumstance would generally have another employee stay and punch their card for them at the appropriate time. It appears that some, such as Mr. Grenier, used post-it notes to doctor their card to be able to leave without awaiting the full wash-up time. It should be stressed that, as a general rule, the impugned conduct of the grievor was not to defraud the Company of working time, but rather to allow him to leave work earlier than would otherwise be the case, by effectively skipping the time he would have spent in washing up and awaiting the appropriate leaving time in the cafeteria.

I am satisfied on the material before me that the employee practices, both in respect of individuals punching other employees' cards and the doctoring of punch cards by post-it notes was reasonably wide-spread. The material before the Arbitrator confirms that in fact with the investigation of Mr. Grenier, following an incident in September of 1997, a broader investigation led to the discovery of irregularities implicating not less than thirty employees in practices involving either others punching for them or the use of post-it notes, or both. Faced with a problem of such proportions, during the course of its broader investigation the Company offered what can only be characterized as a form of amnesty for those employees who admitted their activities. Twenty-nine employees admitted to false timekeeping. All were returned to work subject to a suspension, with their disciplinary records adjusted to a level of fifty-nine demerits.

Two factors appear to distinguish Mr. Grenier in the case at hand. The first is the frequency with which he admittedly manipulated the punch clock system. The second is the fact that he denied engaging in post-it note manipulation during the course of the Company's investigation, a denial which he no longer maintains before the Arbitrator.

When the totality of the material advanced is examined, I am persuaded that this is a case for the mitigation of penalty. I am satisfied that, standing alone, Mr. Grenier's conduct would justify his termination, notwithstanding his prior record and length of service. However, on the whole the material does support the Union's argument that the grievor did not, as a general rule, seek to profit unduly by the practices which he followed. Generally, whether on regular time or overtime, his recorded times of punch out were to avoid waiting unproductively either during wash-up time or down time. In virtually all cases the work assigned to him was in fact completed. Generally speaking, his actions were consistent with what the Union characterizes as a general workplace understanding that once an employee's work was complete the employee was free to go.

I am satisfied that the tolerance of questionable punch-clock practice is amply confirmed by a note posted to the attention of employees in March of 1997 over the signature of Director François Bruneau. It reads, in part:

> "… all personnel with no exception, have to punch their time card at the beginning and at the end of their working shift." (original emphasis)

It is, needless to say, unusual to see a directive stressing so obvious a rule as to the necessity of punching in and out of work. The notice goes on to say that employees who do not adhere to the "new directive" will be spoken with, and if their practices should not change, "we shall have to use disciplinary measures." Without ascribing blame to any segment of management, the foregoing communication can only be understood as an avowal of failure with respect to vigilance in the administration of the punch card system, and a recognition of the laxity of practice which had obviously been tolerated in the work place to that point in time. It may also be stressed that the notice referred to was not in fact given to each employee, nor was it made the subject of any specific verbal management directive or otherwise stressed to the attention of the employees. It appears that it was placed on a bulletin board with a large number of other notices, and was in fact not noticed by a number of employees. It does not appear disputed that punch clock manipulation continued well after the notice was posted.

In all of the circumstances the Arbitrator has some difficulty sustaining the position of the Company that Mr Grenier alone, an employee of twenty-nine years of virtually discipline free service, should be summarily discharged. It is understandable that the employer would distinguish the grievor, to the extent that he did not "come clean" as others did, at least until the arbitration. However, it appears that Mr. Grenier had particular concerns about a possible criminal prosecution for fraud, in light of comments made by a CN police investigator during the course of his own disciplinary investigation. While that might not excuse his dishonesty, it tends to explain why he failed to own up to his actions during the course of the Company's disciplinary investigation. When the grievor is compared with the other employees who are now back at work, it can fairly be said that all of them were dishonest, and that Mr. Grenier only persevered in his dishonesty longer.

Can the bond of trust between the grievor and the Company be restored in the circumstances disclosed? In answering that question I consider it significant that, by his open admission of his conduct at arbitration, Mr. Grenier moves closer to the same plane as the twenty-nine other employees who engaged in dishonesty but were obviously viewed by the employer as deserving of a second chance. While there is no evidence before me as to the length and quality of service of those individuals, it is my view that a person with the 29 years of unblemished service of Mr. Grenier should be accorded a similar opportunity, albeit subject to a longer period of suspension.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that Mr. Grenier be reinstated into his employment, without compensation or benefits, and without loss of seniority. His disciplinary record is to stand at fifty-nine demerits, with his period out of service to be registered as a suspension. The grievor must appreciate that any similar disciplinary infraction in the future will have the most serious of consequences.

April 19, 1999

(signed) MICHEL G. PICHER
ARBITRATOR