

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3195

Heard in Calgary, Wednesday, 9 May 2001

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

### EX PARTE

#### **DISPUTE:**

Dismissal of Mr. "G."

#### **EX PARTE STATEMENT OF ISSUE:**

By way of Form 780 dated October 24, 2000, the grievor was dismissed for his alleged "fraudulent submission of On Company Service (OCS) expense claim for driver training obtained at APNA Professional Driving School from February 107, 2000, as signed and submitted on October 12, 2000". The alleged fraud involved the submission of a credit card receipt that had been altered to read \$800.00 rather than \$300.00. The matter was grieved.

The Union contends that: **(1.)** The credit car receipt was altered by the grievor's wife in an effort to cause the grievor harm. At the material time, the grievor and his wife were experiencing serious marital problems. **(2.)** The grievor is an employee with some twenty years of service who has never before been disciplined for any matter relating to fraudulent activity. **(3.)** The discipline assessed was, in the circumstance, unwarranted and excessive.

The Union request that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all financial losses incurred as a result of this matter.

#### **FOR THE BROTHERHOOD:**

##### **(SGD.) R. F. LIBERTY**

##### **SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

S. Zeimer	– Human Resources Associate
D. Chankasingh	– Counsel
R. Reny	– Human Resources Associate, Vancouver
F. Rose	– General Supervisor, Engineering
E. Fawcett	– Operations Assistant
S. Blackmore	– Labour Relations Associate, Edmonton

And on behalf of the Brotherhood:

D. W. Brown	– General Counsel, Ottawa
R. F. Liberty	– System Federation General Chairman, Winnipeg
J. Dutra	– General Chairman, Edmonton
S. Crawford	– General Chairman,
A. G.	– Witness
N. P. G.	– Grievor

### AWARD OF THE ARBITRATOR

Certain of the facts in this dispute are not challenged. It is common ground that in January of 2000 the grievor was denied a request to take his Class III driver's licence training. On February 1, 2000 the grievor, Mr. "G.", initiated a separate grievance when he was displaced from a temporary foreman's position at Lytton, British Columbia by a junior employee. The position of the Company was that the junior employee held the necessary qualifications for the position, including a Class III driver's licence with an air endorsement. It appears that the grievor then undertook on his own initiative to take a Class III driver's licence course, which he did from February 1 through February 7, 2000 at his own expense. It is common ground that the cost of the course was \$700.00, which Mr. "G." paid in two instalments, using his Visa card. The initial instalment was for an amount of \$400.00 and the second for \$300.00.

Shortly afterward the Company permitted the grievor to resume the temporary foreman's position at Lytton, apparently without the higher rate of pay and expenses. It seems that at one point, however, the Company commenced to pay the grievor at the higher rate, apparently in error. When that error was corrected on April 28, 2000 the grievor subsequently initiated a further grievance for the higher rate of pay. It may be noted that he had by that time completed the Company's own internal training for boom truck operation. While it is not necessary to delve into the detail of the handling of the grievances, on August 9, 2000 Mr. "G." submitted a claim of unfair representation against the Brotherhood with the Canadian Industrial Relations Board (CIRB). The records of that complaint indicate that Mr. "G." had advised the Brotherhood that his Class III driver's licence training course had cost him approximately \$1,200.00. By a settlement made in October of 2000 to resolve the CIRB complaint, the Company agreed with the Brotherhood to reimburse the grievor for his expenses relative to the driver training course.

On October 13, 2000 Mr. "G." gave to the Company's then General Supervisor of Engineer at Kamloops, Mr. Fred Rose, two receipts in the form of Visa slips in relation to his claim for payment of the cost of the driver's course. It is not disputed that the receipt for \$400.00 was in proper order. The receipt for \$300.00, however, had been altered to read as a receipt for \$800.00, the "3" being converted to an "8" by overwriting.

The discrepancy was discovered when Operations Assistant Evelyn Fawcett, being advised by the grievor that he had no other invoices or documents in support of the Visa slips, decided to verify with the driving school as to the amount of the course in question. She received a letter on October 16, 2000, confirming that the cost of the course had been \$700.00, and on the same date received by fax photocopies of the original Visa slips in possession of the driving school, being in the amounts of \$400.00 and \$300.00, respectively. Following an investigation the Company discharged Mr. "G." for "fraudulent submission of On Company Service (OCS) expense claim for driver training obtained at APNA Professional Driving School from February 1 to February 7, 2000, as signed and submitted on October 12, 2000".

The grievor does not deny that someone tampered with the \$300.00 Visa receipt, to give it the appearance of a receipt for \$800.00. When questioned as to this irregularity during the course of the Company's investigation he responded that he did not know who might have done such a thing, indicating that the receipts had been kept by him at both home and work over the period in question, and suggesting that it might have been done by his son. Following his discharge, on November 9, 2000, the grievor's wife, Ms. "A.K.G." signed a written statement sworn before a notary public in Kamloops, stating, in part, the following:

I, "A.K.G.", Housewife, ... in the Province of British Columbia solemnly declare that:

1. I altered a Visa slip from saying \$300.00 to saying \$800.00.
2. At that particular time, I was having marital problems with my husband Narinder Paul Singh "G.", and was under severe depression.
3. My altering the Visa slip was intended to do him harm.
4. I realize now, after he has been relieved of his duties at C.N.R., that I had made a serious mistake, and regret doing so.

The grievor's wife testified at the arbitration hearing. According to her evidence, she and Mr. "G." were having severe marital difficulties in early 2000. It does not appear disputed that she charged him with assault on or about January 12, 2000, a charge which was later withdrawn. According to her own evidence, at the time in question she was under great stress both by reason of her problems with her husband and difficulties with their son, who it

appears had become involved in minor criminal activities. According to her evidence, the pressure of these events had caused her severe depression, requiring the use of relatively powerful drugs, the overall effect of which was to deprive her of her good judgement. She relates that during that period she came across the receipt in question while going through her husband's briefcase. According to her evidence she decided to alter the \$300.00 receipt to \$800.00, for the purpose of getting him into trouble and "teaching him a lesson." She further relates that she did not anticipate that such a thing could eventually cause his dismissal from service, explaining that in her own thoughts she believed that he might at most suffer a suspension for such an infraction.

Obviously, the grievor's entire case rests on the credibility of the account given by his wife. Regrettably the Arbitrator does not believe her. There is, it seems to me, an enormous leap of plausibility in the facts which Ms. "G." advances as an explanation of the alteration of the Visa slip in question. Firstly, by her own admission, she was substantially unaware as to whether the Company would require any further documentation beyond the Visa slip for the purposes of any expense claim to be made by her husband. In other words, there was no reason for her to know or to expect that the alteration of the slip would necessarily be detected. Secondly, an examination of the slip suggests that the alteration was done with considerable care, so as to make any detection of the alteration difficult, if not impossible, to the casual eye. The Visa slip, the original copy of which was tendered in evidence before the Arbitrator, does not on its face look in any way suspicious or give rise to any cause for concern or further investigation. Indeed the evidence of Mr. Rose would suggest that but for the assistance of Ms. Fawcett on the day in question, the slip would in all likelihood have been processed otherwise, without any actual discovery of the discrepancy.

There are further grounds to be concerned about the veracity of Ms. "G." testimony. By her account, as related under cross-examination, at the time she made the alteration to the Visa slip the assault incident was resolved, with the charges being dropped, and her overall relation with her husband was beginning to improve. In that circumstance, the Arbitrator finds it highly unlikely that she would have deliberately set about a scheme which would have as its purpose to colour her husband as a thief in the eyes of his employer, bearing in mind that his wages were the major source of support for herself and her children. Absent medical evidence to confirm the effect of the drugs which she was taking, the Arbitrator is not prepared to conclude that she was effectively operating with an entirely irrational state of mind, so as not to appreciate the meaning and consequences of her actions.

In sum, I find her explanation for the doctoring of the Visa slip to be not only self-serving, but fundamentally unbelievable. If anything, the change carefully made to the Visa slip, increasing the amount shown from \$300.00 to \$800.00, was done in such a way as to create the likelihood that it would pass without detection, garnering a larger payment to her husband, rather than some vague form of punishment, or the teaching of a lesson.

It is not disputed that the grievor did submit a fraudulently altered receipt, the effect of which would have been to obtain for his own benefit the payment of an additional \$500.00, to which he was not entitled. For the reasons related above, I do not accept the explanation that the Visa slip was altered by his wife. Absent any other credible explanation, I am compelled to share the view of the Company that, on the balance of probabilities, the expense slip in question was knowingly and deliberately submitted by Mr. "G.", in violation of his obligation of fidelity to the Company.

Notwithstanding the grievor's prior lengthy service and positive disciplinary record, the overall circumstances do not justify a reduction of penalty. Firstly, as is apparent from the foregoing, the grievor has never admitted to having attempted to defraud the Company. Secondly, given the care with which the fraud was perpetrated, the actions which are the subject of this dispute cannot be said to have been on the spur of the moment, or without some deliberate planning. In all of these circumstances the Arbitrator is compelled to accept the submission of the Company that the actions of Mr. "G." are such as to have fully undermined the bond of trust between himself and his employer, so as to render his continued employment impossible.

For all of the foregoing reasons the grievance is dismissed.

May 22, 2001

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