

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3435

Heard in Montreal, Thursday, 10 June 2004

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

The dismissal of Montreal Rail Traffic Controller Duy Ngo.

JOINT STATEMENT OF ISSUE:

On September 16, 2003, Mr. D. Ngo attended an investigation into his making overseas telephone calls while employed as an RTC at Seaway Tower and Windsor Station.

On September 26, 2003 Mr. Ngo was dismissed from service for making unauthorized long distance phone calls on CPR telephone lines between November 25, 2001 and August 28, 2003 in excess of \$13,998.

On November 3, 2003 the Union advanced a grievance claiming that Mr. Ngo was not aware he was doing anything wrong, and is willing to reimburse the Company. The Union also argues that dismissal is excessive and not consistent with other discipline, and that Mr. Ngo be returned to service with full seniority and compensated for all lost wages and benefits.

The Company asserts the discipline assessed the grievor was warranted and appropriate given all the circumstances and declined the grievance.

FOR THE UNION:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN, TCRC/RCTC

FOR THE COMPANY:

(SGD.) J. J. WORRALL
FOR: GENERAL MANAGER, NMC

There appeared on behalf of the Company:

J. J. Worrall	– Labour Relations Officer, Calgary
R. Hampel	– Manager, Labour Relations, Calgary
J. H. Blotsky	– Assistant Director, Montreal O.C.

And on behalf of the Union:

J. Ruddick – General Chairman, Burlington
F. Zamarripa – Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond contradiction, that the grievor made unauthorized use of the Company's telephones to place personal long distance telephone calls. The calls were placed principally to locations in Asia and Australia by the grievor for the purposes of communicating with members of his family. As a result of an investigation, and in light of what it concluded was an unacceptable explanation for his actions, the Company dismissed Mr. Ngo on September 26, 2003.

The evidence discloses that the grievor was hired in January of 2001 as a rail traffic controller. During the first ten months of his employment he worked in tandem with another RTC who was responsible for assisting in his training. During that period of time there was no improper use of Company telephone lines by Mr. Ngo. The calls which gave rise to his discharge only commenced in November of 2001, after he achieved qualification as a rail traffic controller and commenced working alone, unsupervised.

His use of Company telephone lines for personal long distance calls between November of 2001 and August of 2003 was substantial, to say the least. Records

indicate that he registered some 330 calls overseas at a total cost to the Company of approximately \$14,000. It appears that the bulk of the calls were made while the grievor was assigned to the Seaway Interlocking Tower, and also to a certain extent from his work location within Windsor Station. Because he used either the backup telephone system, or the modem and fax line, the billing for the calls which he made did not come to the attention of his supervisor, Assistant Director J.H. Blotsky. It is common ground that Mr. Blotsky was able to review only Bell Canada billings for the main line at the work station of rail traffic controllers. The matter only came to the attention of the Company by reason of concerns raised by Bell Canada representatives who noticed the unusual pattern of overseas calls on the Company's back up telephone lines. The record further indicates that the calls in question were, at times, substantial in their length. For example, one call made to Vietnam lasted some three hours and six minutes, while a second call to the same destination lasted some four hours.

In explanation of his actions the grievor stated that he purchased prepaid long distance telephone cards which he believed he was using properly for the purposes of his long distance calls. However, when the Company attempted to utilize the cards in the way the grievor described, it became evident that a call could not be placed in the manner claimed. It is also not disputed that the cards in question had limited times attached to them, to a maximum of twenty minutes, and that an individual using the prepaid cards would be advised at the commencement of a call as to how much time was remaining on the card. On that basis the Company submits that the explanation given by Mr. Ngo is simply not credible.

The Arbitrator is compelled to agree with the Company. Company policy, of which the grievor was aware or was reasonably charged with being aware through published policy manuals, prohibits the use of Company telephone equipment for the purposes of making personal long distance calls at the Company's expense. The fact that the grievor never made personal long distance calls on his principal telephone line, which would have resulted in the verification of any charges by his supervisor, and that he never did so in the presence of anyone else, raises serious questions as to the plausibility of his claim of innocence. Moreover, the objective and undisputed fact of his having involved himself in personal conversations for as much as one-half of an entire tour of duty seriously calls into question his credibility as an employee who truly appreciates the nature of his obligation to his employer.

On the whole of the evidence the Arbitrator is compelled to conclude, on the balance of probabilities, that the grievor knowingly indulged in the misappropriation of substantial sums of money for the purposes of making personal long distance telephone calls, that he did so without colourable excuse and that he therefore rendered himself liable to a serious measure of discipline. The only real issue in the case at hand is the appropriate measure of disciplinary sanction in the circumstances.

The grievor is not a long service employee, and few, if any, mitigating factors come into play in the case at hand. While he indicated at one point that he was willing to

reimburse the Company for the monies misappropriated, no payment has in fact been forthcoming from Mr. Ngo. A review of the record indicates that he was less than forthcoming with the employer, and does not appear to have acknowledged the nature or degree of his wrongdoing. In essence, his responses during the course of the Company's investigations amount to a plea of ignorance. The Arbitrator finds that plea to be completely lacking in credibility. I must agree that the bond of trust essential to the grievor's continued employment is clearly broken.

In the circumstances the Arbitrator can find no reason to disturb the discipline assessed against the grievor. The grievance is therefore dismissed.

June 14, 2004

(signed) MICHEL G. PICHER
ARBITRATOR