

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3575**

Heard in Montreal Wednesday, 13 September 2006

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

**DISPUTE:**

The discharge of Employee "G", effective May 12, 2005, for "theft of Company funds through fraudulent overtime claims".

**JOINT STATEMENT OF ISSUE:**

Employee "G" was employed by Canadian National Railways ... since January of 1989 and had held the position of Dispatch Coordinator since January of 2001.

On May 9, 2005, Employee "G" was issued by Canadian National Railways, a notice to appear for a formal investigation on May 11, 2005, "in conjunction with circumstances surrounding your timekeeping practices on Monday May 2, 2005, Tuesday, May 3, 2005 and Wednesday, May 4, 2005<sup>4</sup> [sic]." Employee "G" did attend the scheduled investigation on May 11, 2005 and during that investigation admitted that he had submitted a number of fraudulent overtime claims in order to support a gambling addiction. On May 12, 2005 Employee "G" was issued a letter by Mr. James Cairns, Director IMX Service Centre CN Intermodal, advising Employee "G" that he was being discharged from employment at Canadian National Railways for theft of Company funds through fraudulent overtime claims.

It is the Union's contention that the discipline assessed to the grievor was too severe when the mitigating circumstances, such as the grievor's gambling addiction, remorse, restitution, etc. are taken into account. The Union requests in settlement of this matter that the grievor be reinstated with full service and seniority and that the time out of service be considered as a suspension.

The Company disagrees with the Union's contentions and maintains that discharge is appropriate in this instance. As such, the Company requests that the Arbitrator dismiss the grievance.

**FOR THE UNION:**

**(SGD.) R. FITZGERALD**  
PRESIDENT, COUNCIL 4000

There appeared on behalf of the Company:

- D. Veenis – Manager, Labour Relations, Toronto
- A. DeMontigny – Sr. Manager, Labour Relations, Montreal

And on behalf of the Union:

- R. Fitzgerald – President, Council 4000, Toronto
- Employee "G" – Grievor

**FOR THE COMPANY:**

**(SGD.) D. S. FISHER**  
DIRECTOR, LABOUR RELATIONS

**AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes, beyond controversy, that the grievor abused of his authority as a Dispatch Coordinator to fraudulently enter overtime wage claims on his own behalf on at least five occasions. It appears that he was able to do so by virtue of his position as Dispatch Coordinator, being cleared to administer payroll transactions without further supervision. He was ultimately investigated and dismissed for having made fraudulent wage claims on May 2, 3 and 4, 2005. Additionally, during the investigation he admitted to having done so on at least two other occasions.

Standing alone, the grievor's actions would clearly support the termination of his employment. There are, however, mitigating circumstances to be considered in the unique facts of the case at hand. The record discloses that Employee G suffered a serious gambling problem, by reason of which he was compulsively buying \$200 to \$300 worth of lottery tickets weekly, at the time of the events in question. He explains

that he made the fraudulent wage claims as a means to pay off debts which he had incurred by reason of his compulsive lottery gambling.

It is clear that following his discharge the grievor sought and successfully followed two separate courses of treatment for his condition. A letter dated January 27, 2006 signed by Gambling Counsellor Wendy Linton of the William Osler Heath Centre in Brampton, Ontario, confirms that the grievor has successfully followed a course of one-on-one counselling sessions with her. Additionally, the grievor's own unchallenged representations are that he has continued his contact with the Centre. There is no dispute that he has maintained his gambling compulsion under control for a considerable period of time and continues to do so.

Additionally, the grievor's record is impressive. Over some fifteen years of employment with the Company he has an exemplary disciplinary record, never once having been disciplined, for any reason. When all of the factors are considered, the Arbitrator is not convinced that the bond of trust between employer and employee is irreparable in the case at hand, particularly if the grievor should be reinstated into a position which does not involve the same discretion over payroll that he previously had.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, albeit not as a Dispatch Coordinator with unsupervised control over payroll. It shall remain within the discretion of the Company to determine whether the grievor should ever be reinstated into that level of responsibility.

Additionally, as a condition of reinstatement the grievor must agree, for a period of two years following reinstatement, to provide to the Company not less than quarterly letters of report from the William Osler Heath Centre, or such other institution as the parties may determine by agreement, or failing agreement to be directed by the Arbitrator, confirming Employee G's ongoing contact with the Centre or institution and his continued control of his gambling problem. Any failure to honour that condition, and to obtain positive written reports in each quarter, will render the grievor liable to termination.

September 20, 2006

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