

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3684**

Heard in Montreal, Thursday, 10 July 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 2004)

DISPUTE:

The discharge of Thermite Welder Jason Bourassa effective February 11, 2008, for general unsafe acts resulting in the destruction of CN truck 073532 on January 18, 2008.

JOINT STATEMENT OF ISSUE:

On February 11th the grievor was discharged for his alleged "general unsafe acts resulting in the destruction of CN truck 073532 on January 18, 2008. Failure of GOI Safety rule Sect. 8, 8.1a). Failure of GOI Safety Rule Sect. 8, 11c."

The Union filed a grievance regarding this matter citing violations of Articles 18.2(d), 18.4, 18.5, and Appendix VI of Agreement 10.1. The Union has grieved the Company assessed unjust and excessive discipline in discharging the grievor.

The Union argues that the Grievor was cooperative with the investigation and admitted his role in the incident. The Union has argued that the discipline is excessive and unwarranted and should be immediately removed from the Grievor's work record. The Union has argued that the Grievor is a long service employee with a good work record with no previous offences.

The Union has further requested the Grievor be immediately reinstated to his former position with full redress with no loss of pay, benefits or seniority standing.

The Company submits that the Grievor is deserving of the discipline and that they have not violated the Collective Agreement.

FOR THE UNION:

(SGD.) M. PICHÉ
STAFF REPRESENTATIVE

FOR THE COMPANY:

(SGD.) D. BRODIE
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
A. deMontigny	– Sr. Manager, Labour Relations, Montreal
K. Luke	– Program Supervisor, Winnipeg

And on behalf of the Union:

M. G. Piché

– Staff Representative, Toronto

AWARD OF THE ARBITRATOR

The record confirms, beyond dispute, that on January 18, 2008 the grievor, Thermite Welder Jason Bourassa, was employed as an off season track maintenance employee clearing snow and ice from switches on the Redditt Subdivision near Alma, Manitoba. On that day, which was particularly cold, he worked along with Thermite Welder Alric Wright, using a four door crew-cab pick-up truck.

One of the tools utilized in winter track maintenance is a gasoline powered air blower. Because of the cold temperatures the employees decided to place the blower on the rear seat of their vehicle as they moved from one location to another. As they were driving they detected a smell of gasoline emanating from the back seat of the crew-cab. Mr. Bourassa asked Mr. Wright, who was driving, to pull over. Without explaining anything to his co-worker, Mr. Bourassa proceeded to open the rear door of the crew cab where he saw a small spot of gasoline on the rear seat of the vehicle. He decided that the odour of the gasoline could be eliminated by simply burning the gasoline off from the surface of the seat. To that end, he lit a lighter which he had in his position and applied it to the surface of the seat.

Predictably, the seat burned quite well. So well in fact that, that Mr. Bourassa could not extinguish the flames. When he applied water to the flames they subsided temporarily, but a substantial amount of smoke began to emanate from the area behind

the seat where, it appears, a substantial quantity of gasoline had gathered. Very shortly the rear seat exploded into flames, causing Mr. Wright to exit the vehicle and Mr. Bourassa to withdraw the gas blower from where it was resting on the seat. After some slight confusion Mr. Bourassa called the local fire authority by signalling 911, and a fire truck attended at the scene.

The Company's crew-cab was entirely gutted by fire. The heat of the blaze was sufficient to fully destroy the entire inside of the cab, including the dashboard, steering wheel, seats and all appointments and upholstery. Fortunately, largely by reason of the cooling effect of water poured on the vehicle by the fire truck, acetylene tanks located in the box of the truck immediately behind the cab, as well as a number of containers of gasoline, did not ignite or explode.

Following an investigation the grievor was discharged for his "general unsafe acts resulting in the destruction of CN truck 073532 on January 18, 2005" as well as a violation of GOI Safety Rule, Section 8, 8.1a and 11.c, concerning the proper storage of equipment.

The Union argues that the grievor's prior disciplinary record, which was without blemish, and his service of eight years, should mitigate against the assessment of discharge for what it characterizes as a first offence. On the facts of the instant case the Arbitrator has some substantial difficulty with that argument. Firstly, eight years is not of itself not remarkably long service such as to bring important mitigating weight to a decision in respect of a termination of employment. More importantly, it must be

recognized that all first offences do not necessarily merit reprimand or the assessment of demerits at the lower end, based upon an application of progressive discipline. The jurisprudence well recognizes that there may be offences which, of themselves, are so serious as to call into question the viability of an individual's employment.

This is such a case. The submission of the Company, which the Arbitrator is compelled to accept, is that the judgement exhibited by the grievor in a safety-sensitive circumstance was so wanting as to fundamentally undermine the bond of trust between himself and his employer. It is difficult for the Arbitrator to second guess the Company in its concerns about the judgemental capacities of an employee who introduces a live flame into a vehicle as a means of eliminating the smell of gasoline. Nor can this Office lightly disregard the serious consequences, both real and potential, of the grievor's reckless misconduct. On the whole of the material I can see no basis that would justify a substitution of penalty in the case at hand.

For all of the foregoing reasons the grievance must be dismissed.

July 16, 2008

(signed) MICHEL G. PICHER
ARBITRATOR