

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

**CASE NO. 3735**

Heard in Montreal, Tuesday, 14 April 2009

Concerning

**CANADIAN NATIONAL TRANSPORTATION LTD.**

and

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

**DISPUTE:**

In May 27, 2008, the standard contract of Mr, Alfredo Theolis was terminated in accordance with Article 8.02 of the Collective Agreement.

**JOINT STATEMENT OF ISSUE:**

The Union alleges that the discharge of owner-operator A. Theolis effective May 27, 2008, was unjust and abusive and requests that Mr. Theolis be reinstated with full compensation and with all the benefits provided for under the collective agreement.

The Company denies the Union's allegations.

**FOR THE UNION:**

**(SGD.) D. ST-LOUIS**  
NATIONAL REPRESENTATIVE

**FOR THE COMPANY:**

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

There appeared on behalf of the Company:

D. S. Fisher – Director, Labour Relations, Montreal  
M. Peterson – Operations Manager, Toronto  
J. Palik – Driver Manager, Montreal

And on behalf of the Union:

D. St. Louis – National Representative, Montreal  
C. Rainville – Regional Representative, Montreal  
J. Savard – Vice-President, Intermodal, Montreal

### AWARD OF THE ARBITRATOR

The grievor, a tractor trailer operator, was hired as a contract employee on February 19, 2005. His service record stood at 3 years and 3 months at the time his contract was rescinded. As a result of an investigation by CN police, the Company determined that an agent for Pneus Motor Inc. was reselling stolen tires belonging to the Company to tractor trailer operators. Thirteen tractor trailer operators on contract with CN were alleged to be involved with the scheme, including the grievor.

In the grievor's case, the agent for Pneus Motor Inc. agreed to sell the grievor two tires at a total cost of \$330.00 each, which was significantly below the retail sale price. The tires were clearly marked with a CN logo. The grievor had the tires installed in the garage area of Pneus Motor Inc. during his days off. There was no corresponding work order to document the installation of the tires. The grievor obtained a hand-written receipt for \$660 from Pneus Motor Inc. a few days after the two tires were installed. The receipt indicates that the tires were paid for in cash. The tire reference numbers on the receipt, however, do not correspond with the tires that were installed on the grievor's vehicle. The grievor stated at the investigation that he did not notice that the tires had a CN logo. He also stated that he thought the transaction was reasonable because CN transport carriers benefit from discounted prices on their tires.

The Union submits that the grievor committed an error in judgment and should not be terminated over this single incident. The Company maintains that the rescinding of the grievor's contract was justified under the circumstances and that the grievor can no longer be trusted as an employee.

The Arbitrator is of the view that this was more than an error in judgment, as the Union claims on behalf of the grievor. The fact that the grievor paid a price that was well below the market price, that he paid for the tires in cash and that he received a receipt some four days after the transactions are evidence of his culpability. I am satisfied on the balance of probabilities that the grievor knowingly purchased stolen property that originally belonged to the Company. The remaining issue is whether the penalty of termination is appropriate discipline. I am in agreement with the Company that the act of purchasing stolen property, particularly property belonging to his one's own employer, breaches the bond of trust which is essential to the activities of an independent tractor trailer operator. As noted in **CROA SHP 274**:

It is well established that theft of Company property strikes at the root of the employment relationship to the extent that it destroys the foundation of trust essential to continued employment (**CROA Cases # 806, 859, 860, 937, 986, 1165 and 1835**). Nor is this a case in which the Union can assert long service or a particularly positive disciplinary record. At the time of his discharge, Mr. Agnew had seven years of service and a discipline record standing at thirty-five demerits. On the whole, given the gravity of the offence committed, the Arbitrator can see no reason to substitute a lesser measure of disciplinary penalty.

For the foregoing reasons the grievance must be dismissed.

Contract tractor trailer operators work independently and with little supervision. There is a commensurate expectation flowing from this independence that employees like the grievor will carry out their duties honestly and responsibly at all times. The grievor's failure to do so in this case renders the continued employment relationship untenable. His behaviour and lack of candour over the incident has undermined the reliability and trust required of operators in his position. In terms of mitigating factors, the grievor is not a long service employee. He has only three years and three months of contract service. Further, the fact that he has never been

previously disciplined does not justify a reduction in the disciplinary sanction given the seriousness of his transgression.

For all these reasons, the grievance is dismissed.

May 4 , 2009

**(signed) JOHN M. MOREAU QC**  
ARBITRATOR