

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4324

Heard in Montreal, July 8, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

The discharge of Permanent Machine Operator Cory Wesley on October 23, 2013.

JOINT STATEMENT OF ISSUE:

On October 1, 2013 the Company conducted a formal employee statement for Permanent Machine Operator Cory Wesley, as well as a supplemental investigation on October 10, 2013. The outcome of the employee statements ultimately resulted in the discharge of employee Cory Wesley on October 23, 2013 for the "unauthorized use of company equipment and Contractor equipment and contractor, performance of non-work related activities on Company time, unauthorized removal of CN material from company property for personal use, theft of fuel, during the month of September 2013."

The Union requests that the discipline be expunged and requests the reinstatement of Cory Wesley.

The Company disagrees with the Unions contentions and has declined the Union's grievance.

FOR THE UNION:
(SGD.) M. Piché
Staff Representative

FOR THE COMPANY:
(SGD.) S. Prudames
Labour Relations Officer

There appeared on behalf of the Company:

S. Prudames	– Labour Relations Officer, Toronto
S. Grou	– Senior Manager Labour Relations, Montreal
J. Vieira	– Engineering, Toronto
L. Waller	– Officer Worker's Compensation Claims, Toronto
J. Abernot	– Engineering, Hornepayne
R. Thibodeau	– Contractor, Ottawa
B. Laidlaw	– Manager Labour Relations, Winnipeg
M. Lancia	– Associate Human Resources, Winnipeg

There appeared on behalf of the Union:

M. Piché	– Staff Representative, Toronto
T. Cotie	– Chief Steward, Sudbury
K. Fraser	– Vice President, Hornpayne

AWARD OF THE ARBITRATOR

Based on a statement provided by FC Contractor, Mr. Roger Thibodeau, contained in an email dated September 20, 2013 addressed to Supervisor John Abernott, the Company came to the conclusion, following a disciplinary investigation, that the grievor, Machine Operator C. Wesley, misappropriated Company materials which he transported for further use at a small wooden bridge, apparently originally constructed by the Company, on a road leading to his parents' cottage.

In fact, Mr. Thibodeau makes a number allegations. Firstly, Mr. Thibodeau relates that on September 2, 2013 the grievor, who exercised a certain supervisory authority over him, required him to place wooden beams in his TFO vehicle and to transport them to a wooden bridge on a minor road leading to his parents' cottage. He further states that on September 9, 2013 he accompanied the grievor in the grievor's company truck which contained a fuel tank. According to his account the grievor made a detour to transfer the fuel in his truck's extra fuel tank into containers in the possession of the grievor's parents. Mr. Thibodeau also relates that on the following day, September 10, 2013, Mr. Thibodeau also overheard the grievor instructing his father to meet him near crossing 243 to make a further transfer of fuel from the tank in his Company truck into containers in his father's truck.

While the grievor denies having stolen the beams or the fuel, in addition to the written account of Mr. Thibodeau, who was present at the hearing and available for cross examination, the Company entered into evidence photos which clearly depict Company owned wooden beams near the cottage road bridge, as well as a pile of small stones which the Company believes to be ballast, although the Union asserts that it may have been obtained from a quarry. The grievor was not present to be examined at the hearing.

It is true to say that the Company bears the burden of proof in this case, and given that theft amounts to a serious accusation, that proof must be reasonably clear and compelling. I am satisfied that in fact the Company has discharged that burden. Firstly, I consider it significant that Mr. Thibodeau was present at the hearing and available to be cross examined, although the Union chose not to put any questions to him. Conversely, Mr. Wesley was not present at the hearing and gave no evidence. During the course of his disciplinary investigation Mr. Wesley stated that he had “permission” to remove and use the crossing planks from boom truck operator Luke Labonté, a bargaining unit employee. When pressed on the matter, he acknowledged that he did not have permission from any CN official or officer to take the materials in question.

Upon a careful review of the extensive evidence presented, I am satisfied that the Company has discharged the burden of proof which is upon it. As the photographic evidence confirms, there is no doubt but that the crossing planks found at the bridge site in the road to the grievor's parents cottage are materials taken from the Company. In light of the evidence of Mr. Thibodeau, which I accept, I am satisfied that those materials were taken improperly and without permission by Mr. Wesley. I also accept the account of Mr. Thibodeau with respect to the theft of fuel by Mr. Wesley.

The jurisprudence of this Office has long recognized that theft is among the most serious of disciplinary offenses, being so obviously inconsistent with a relationship of trust essential to any employee's status. That is reflected in the following terms found in

CROA 2864 :

It is well established in the jurisprudence of this Office, that as a general rule, acts of theft and misappropriation of Company property and funds strike at the root of the relationship of trust which is intrinsic to the relationship between employer and employee. It is also clear that the taking of scrap material without authorization violates the employee's obligation of trust.

I am satisfied that the material before me establishes, on the balance of probabilities, that the grievor acted without permission to remove wooden planks which were Company property to a roadway leading to his parents' cottage. I also accept the evidence of Mr. Thibodeau that the grievor improperly transferred fuel from the storage tank on his truck into containers for his parents' use. As regards the alleged ballast or stone found at the bridge location, I cannot conclude, on the balance of probabilities, as to the origin of that material, which the Union's representative submits was taken from a local quarry. In the result, however, the evidence before me confirms that the grievor did

misappropriate both wooden planks and fuel belonging to the Company, and in my view did so in a manner which plainly destroyed any possible bond of trust which would be essential to his ongoing employment relationship. For these reasons the grievance must be dismissed.

July 14, 2014

MICHEL G. PICHER
ARBITRATOR