CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.302

Heard at Montreal, Tuesday, September 14th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim by the Brotherhood that Steward-Waiter T. C. Cover who was discharged effective November 2, 1970 be reinstated in the service and compensated for all time lost.

JOINT STATEMENT OF lSSUE.

Steward-Waiter Cover was in charge of the Cafe Bar Car on Train No. 148, Windsor to Toronto, on July 27, 1970. A Customer reported that on that date he lost two rail tickets (White) reading Windsor to Toronto and two tickets (blue) reading Toronto to Windsor in the car to which Mr. Cover was assigned. All four tickets were purchased at the ticket office at Windsor on July 27, 1970.

On July 30, 197O, two white and two blue tickets similar in passage date and location of sale were presented for refund at the Windsor ticket office. Two members of the sales staff identified Mr. Cover as the person who presented and received refund for these tickets.

The Brotherhood claims that Steward-Waiter Cover was unjustly disciplined and he should be reinstated and compensated for time lost. The Company denied the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER NATIONAL VICE-PRESIDENT	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

O. W. McNamara	System Labour Relations Officer, C.N.R., Montreal
D. C. Fraleigh	System Labour Relations Officer, C.N.R., Mtl.
W. W. Wilson	Labour Relations Assistant, C.N.R., Toronto
F. J. Doyle	Asst. Supt. Customer & Catering Services, CNR, Toronto
R. D. Edmondson	Special Agent, Investigation Dept., C.N.R., Toronto
W. H. Ketchabaw	Special Agent, Investigation Dept., C.N.R.,

London
Miss Anna J. Campbell - Senior Ticket Salesman, C.N.R., Windsor
Dale Burdge - Ticket Clerk, C.N.R., Windsor

And on behalf of the Brotherhood:

R. J. Roussel	Representative, C.B.R.T. - Toronto
M. Bennett	Local Chairman, Local 283, C.B.R.T., Toronto
J. J. Huggins	Secretary Grievance Committee, Local 283, C.B.R.T., Toronto
T. C. Cover	(Grievor)

AWARD OF THE ARBITRATOR

At the hearing of this matter, it was the uncontradicted evidence of two witnesses, sales clerks in the Company's ticket office at Windsor, that the grievor appeared at that ticket office on July 30, 1970, and presented four tickets for refund, receiving the amount of $33.00 in cash therefor. The evidence is that the grievor, whose name is T. C. Cover, and who lives at 140 Pinewood Avenue, Toronto, gave a receipt for the money bearing as signature the name "T. Mackwood" and the address "140 Oakwood Avenue, Apt. 3C." There is further evidence that there is no number 140 on Oakwood Avenue in Toronto, and that the name "T. Mackwood" does not appear in the Toronto City Directory or telephone book. The grievor was positively identified by the witnesses as the person who presented the tickets for refund, who received the cash, and who gave the receipt above described. The witnesses, who were cross-examined at length, were not shaken in their identificatlon of the grievor, and there is no evidence to the contrary. The grievor, who was present at the hearing, was not called to give evidence.

There can be no doubt whatever, and I find as a fact, that the grievor did, on July 30, 1970, present four tickets for refund, receive cash therefor, and give the receipt above described. At his investigation, held on October 20, 1970, the grievor denied that he had presented himself at the ticket office, refunded tickets, or given the receipt above described. From the evidence before me, I can only conclude that this denial was false. The grievor was discharged for untruthfulness in concealing facts at the hearing conducted October 27th, 1970". From the foregoing, it is apparent that the grievor was untruthful in his statements given at that hearing, and that he did conceal the facts relating to a very serious matter, namely, an apparently fraudulent refund of tickets for cash. On the facts established before me, the only conclusion that can reasonably be drawn is that the grievor was untruthful in his statement, and that, in the circumstances, he was discharged for just cause.

The tickets which the grievor presented were stamped as having been sold on July 27, 1970. There was, it seems, a report of loss of tickets purchased that day by certain passengers. The grievor, it seems, was at work that day, and it is possible that it was those

tickets which he later presented for refund. It is, however, impossible to conclude that that was in fact the case. The only established fact implicating the grievor is his actual presentation of tickets for refund on July 30. How he came into possession of those tickets is not an essential aspect of the case against him, he did not present any explanation of the matter, but simply denied, through his representatives at the hearing, any connection with the matter.

It was suggested in argument that in fact the grievor was innocent, and that he had been "framed" by the ticket clerks, who had themselves wrongly refunded tickets for cash, and had then falsely pointed to the grievor as having taken the money. It is, of course, within the realm of possibility that this unpleasant theory is true. It is, however, wildly improbable, and there is no evidence whatever to support it. If the ticket clerks had sought improperly to refund tickets by giving a false receipt, there would be no reason for them then to add the grievor's name to it, and still less reason for them to use the suspiciously suggestive name and address place on it. This suggestion is simply not entitled to serious consideration.

The investigation of the matter seems to have been delayed somewhat, but there is no precise time limit for such investigations set out in the collective agreement. There has been no violation of any of the procedural provisions of the agreement, and it cannot be said that the grievor who remained in the Company's employ until the time of his discharge, was prejudiced by any delay.

The evidence as to the improper presentation of tickets by the grievor is quite clear. Just cause for the Company's action has been established and the grievance must accordingly be dismissed.

J. F. W. WEATHERILL
ARBITRATOR