

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 611

Heard at Montreal, Tuesday, June 14, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

DISPUTE:

Dismissal of Mr. A. Bogoros, formerly employed as Sleeping Car
Conductor.

JOINT STATEMENT OF ISSUE:

Effective February 22, 1976, Mr. A. Bogoros was discharged from the
service of the Company on account of irregularities in the handling
of Company funds while assigned as Sleeping Car Conductor on Train
No. 87 ex Toronto on December 24, 1975.

The Brotherhood has appealed Mr. Bogoros' dismissal on the grounds
that the Company has not been able to show conclusively that
Mr. Bogoros was guilty of the charges laid against him. The
Brotherhood considers that the discipline assessed was unwarranted
and therefore has requested that he be reinstated in railway service
with full compensation and benefits.

The Company has declined the Brotherhood's request.

FOR THE EMPLOYEE:

(Sgd.) J. A. Pelletier
National Vice-President

FOR THE COMPANY:

(Sgd.) S. T. Cooke
Vice-President
Labour Relations

There appeared on behalf of the Company:

G. A. Carra	System Labour Relations Officer, C.N.R., Montreal
S. Smythe	Administrative Officer, C.N.R., Toronto
Mrs. C.A. McHardy	Labour Relations Assistant, C.N.R., Montreal
Mrs. S. Graham	(Witness) - Toronto
M. McArthur	(Witness) - Toronto

And on behalf of the Brotherhood:

J. D. Hunter	Regional Vice-President, C.B.R.T., Toronto
J. J. Huggins	Local Chairman, Lo.283, ' ' ' '
A. Bogoros	(Grievor) - Toronto

V. Innis (Witness) - ''

AWARD OF THE ARBITRATOR

The grievor is an employee of some twenty-nine years' service. There is no evidence before me relating to his disciplinary record. He was discharged for "irregularities in the handling of company funds", and in a case such as this there is an onus on the company to show that such irregularities occurred, that they were of such a nature as to justify the imposition of discipline, and that in the circumstances discharge was the appropriate penalty.

There is no doubt that there were "irregularities" in the grievor's handling of the sale of sleeping car accommodation. That might be due in part to inadequate training, or to lack of experience, since the grievor had only recently qualified as a sleeping car conductor. The run in question is said to have been the first run of that assignment. Further, it appears that the "irregularities" were participated in by other crew members.

The important question is whether the "irregularities" in question amounted in this case to theft of the company's funds. That, essentially, is the gist of the company's case: that the grievor sold certain sleeping car accommodation to a passenger for cash, and did not pay the money over to the company in his accounting. That is obviously a very serious offence and it would, in general, constitute just cause for discharge. It must be clearly proved on the evidence, although the standard of proof required is that of the balance of probabilities.

The matter came to light as a result of a complaint made by the passenger in question, to the effect that the grievor sold her accommodation to the wrong point, so that she was seriously delayed in reaching her destination. The grievor testified that he simply sold the passenger the accommodation she requested. The facts are however that she did go past the point at which she should have disembarked, that the grievor knew her destination, and ought to have ensured that she disembarked at the proper point. That, however, is not in issue here, nor is there any issue as to the grievor's having been drinking, on which point I prefer the evidence of the grievor to that of the complainant, who was not an impressive witness on that matter.

There is no direct evidence that the grievor pocketed funds for which he did not account. He did in fact make cash sales to passengers, allocating space in several sleeping cars. He did in fact account for those sales which he reported. What is not clear is whether there were sales made which were not reported, and in particular whether the sale of space to the complainant was not reported.

The grievor did sell space to one passenger to Kirkland Lake. This passenger, it is said, was the complainant's sister. The passenger was given accommodation in car 8736, which went to Kirkland Lake. He also sold space to a passenger to Porquis Junction. This passenger, according to the grievor, was the complainant, travelling with a child. The passenger was given accommodation in car 8733, which went

to Porquis Junction, but was not the correct car for anyone going to Kirkland Lake. In fact the complainant's party consisted of four people, three adults and one child, travelling on the same ticket. It is common ground, however, that the complainant and her sister purchased sleeping car accommodation separately, one after the other. It was the complainants' evidence that the four persons travelled in the same car, in opposite roomettes. This is confirmed by Sleeper Car Porter Braun's statement. The reservation diagram maintained by the grievor shows a party of four persons, three adults and a child, as occupying roomette 3 in car 8733. The call card prepared for that car shows passengers destined for Porquis Junction to be occupying roomettes 3, 4 and 7. The grievor's explanation was that the notation for roomette 7 was a mistake, and that it should have read Swastika. This would appear to be borne out by Porter Braun's statement that the only passengers be detrained at Porquis Junction was a party of three adults and one child, that is, the complainant's party.

The grievor did not remit the transportation ticket which he ought to have collected from the complainant, and he did not cross-reference the transportation tickets with the sleeping car accommodation receipts. The circumstances give rise to a suspicion that the grievor did sell accommodation for which he did not account properly. The material before me does not, however, establish that the grievor did in fact make more than the five cash sales for which he accounted. He did not properly account for his transaction with the complainant, but he seems to have failed generally to follow the correct procedures. He did in fact record the presence of what can only have been the complainant's party.

Having considered all of the material submitted, it is my conclusion that it has not been established that the grievor in fact sold accommodation to the complainant and pocketed the proceeds. In my view, then, it has not been shown that there was just cause for the discharge of the grievor. He is therefore to be reinstated in employment, and compensated for loss of earnings. Since the question arose by reason of the grievor's own failings as a sleeping car conductor, and his own failure to keep proper records, the grievor's compensation should be calculated not on the basis of lost earnings as a conductor, but on the basis of the lower-rated job (if in fact it was such) which he formerly held.

J.F.W. WEATHERILL
ARBITRATOR