

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 796

Heard at Montreal, Tuesday, December 9, 1980

Concerning

CN MARINE INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Mr. W. Mugford, Bar Steward, effective June 12, 1980 for misappropriation of Company funds and improper cash handling procedures.

JOINT STATEMENT OF ISSUE:

Mr. Mugford was dismissed on June 12, 1980 for misappropriation of Company funds and improper cash handling procedures during his tour of duty on April 27, 1980.

It is the Union's position that if discipline was warranted, dismissal was too severe a penalty to be imposed.

FOR THE EMPLOYEE:

FOR THE COMPANY:

(SGD.) W. C. VANCE
REGIONAL VICE-PRESIDENT

(SGD.) G. J. JAMES
DIRECTOR INDUSTRIAL
RELATIONS

There appeared on behalf of the Company:

N. B. Price	-	Manager, Labour Relations, CN Marine Inc., Moncton, N.B.
W. J. Nearing	-	Sr. Labour Relations Asst., CN Marine Inc., Moncton, N.B.
Capt. J.M. Taylor	-	Asst. Marine Superintendent, CN Marine Inc., North Sydney, NS
J. J. O'Connor	-	Inspector, CN Police, Montreal, P.Q.

And on behalf of the Brotherhood:

W. C. Vance	-	Regional Vice-President, C.B.R.T., Moncton, N.B.
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AWARD OF THE ARBITRATOR

This case is related to Cases 763-767, and the general considerations dealt with in Case 763 apply equally in this case.

The evidence is, and I find, that on at least three occasions on April 27, 1980, the grievor, while acting as bartender, served drinks

(soft orznks or beer), to customers, accepted payment therefor, and (in some cases) did not enter the transaction in the cash register or (in others) rang up \$0.00. The result of this should have been an overage, but no overage was reported. The probable conclusion is that the grievor simply kept the proceeds of the sales.

While the grievor had not been specifically trained in the handling of cash, he had worked in various positions on the ship and had worked as a Bartender for a certain time when the observations were made. It is clear from his own statement that the grievor in fact did know the correct practice of recording these cash transactions. His explanation for ringing up \$0.00 - that it was to make change for those wishing to use the juke box or cigarette machine - is likely enough as an explanation for ringing up \$0.00, but it does not relate to his failure to enter drink service transations.

The probable conclusion, as I have said, is that the grievor was misappropriating Company funds. Proof beyond a reasonable doubt is not required and is not appropriate in cases of this kind which are not criminal proceedings, but which rather determine whether or not an employment relationship is to continue. To require an employer to retain an employee who is probably misappropriating his funds (which would be the effect of allowing the grievance) is not at all the same as discharging an accused person against whom a criminal charge has not been proved beyond a reasonable doubt.

The misappropriations which were observed may be thought to be trivial. The price of a beer or of a Coke is not a large amount. Then again, a drop of water from a leaky faucet is not much, but as we all know, a leaky faucet results in a loss of many gallons per day. If there were (as, on the balance of probabilities, the evidence establishes there was), misappropriation here, then the offence was a serious one, and justifies discharge. Although the grievor has considerable seniority and a clear record, the factors that might justify a reinstatement in employment where such an offence is committed are not present here. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR