

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 986

Heard at Montreal, Wednesday, September 15th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Track Maintainer D. W. Woodhouse of Kukatush, Ontario, effective 27 October 1981 for the removal and possession of goods consigned to the Company's care.

JOINT STATEMENT OF ISSUE:

Following an investigation Track Maintainer Woodhouse was dismissed from the Company's service on 27 October 1981 for deliberate and unauthorized removal and possession of goods and material consigned to the Company's care involved in derailment at Shawmere, Ontario, 1 July 1981.

The Union contends that dismissal was too severe a penalty and requests that Mr. Woodhouse be reinstated.

The Company declined the request.

FOR THE EMPLOYEE:

(SGD.) PAUL A. LEGROS  
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Director Labour Relations

There appeared on behalf of the Company:

K. J. Knox - Manager Labour Relations, CNR, Montreal  
Lieutenant R. C. Werden - Hornepayne, Ont.  
T. D. Ferens - System Labour Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

Paul A. Legros - System Federation General Chairman, BMW, Ottawa  
L. Boland - Federation General Chairman, BMW, London  
W. Montgomery - General Chairman, BMW, Belleville

AWARD OF THE ARBITRATOR

The grievor, in the course of his duties, performed certain work at the site of a derailment at Shawmere, Ontario. He admittedly removed a black felt hat from the scene of the derailment. The hat, according to the grievor, was recovered from the right-of-way, where it had apparently fallen from a derailed freight car. The grievor removed the hat surreptitiously, hiding it under his coat.

From all of the evidence before me, I consider the more probable case to be that the grievor removed the hat from the freight car itself. However this may be, the evidence (of admissions made by the grievor to a Company police officer) is that the grievor, together with another employee (and I do not rely on the hearsay statement of the other employee), attempted to pilfer goods from the derailed car, which had been removed to a siding. He was frustrated in this only by the fact of others getting there first. Further, the grievor had taken goods from the car at the derailment site, and hidden them in the bush. When he went to recover them, they were gone. The fact that goods, stolen by the grievor, were subsequently removed by someone else is of course no defence to the grievor's wrongdoing.

These were not spur-of-the-moment offences, but were the actions of a thief. There was clearly just cause for the Company to discharge such a person. The grievance is accordingly dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.