

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 987

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 Trackman M. R. Fortin of Foleyet, Ontario, effective 25 September 1981 for the unauthorized possession of goods consigned to the Company's care and for violation of Rule 1.18, Part 2, Form 1233E.

JOINT STATEMENT OF ISSUE:

Following an investigation Trackman Fortin was dismissed from the Company's service on 25 September 1981 for unauthorized possession of goods known by him to be stolen while in the Company's care and for violation of General Rule 1.18, Part 2, Form 1233E.

The Union contends that dismissal was too severe a penalty and requests that Mr. Fortin 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, BMWE, Ottawa
L. Boland - Federation General Chairman, BMWE, London
W. Montgomery - General Chairman, BMWE, Belleville

AWARD OF THE ARBITRATOR

The grievor did in fact purchase property, stolen from the Company, and which he knew was Company property. Indeed, from the material before me, it is quite clear that the grievor knew the property had been stolen from the Company. The grievor was found guilty of the criminal offence of possession of stolen goods in connection with the

same offence. In fact, the evidence establishes that the grievor had counselled the juvenile who committed the theft. Faced with the report of the Company police officer who had taken a statement from the juvenile, the grievor had no question or comment. He eventually admitted that he knew the property was the Company's, although he had at first denied it.

In these circumstances, there is no doubt that the grievor was subject to discipline, and in my view discharge was justified. Whether or not it should be concluded (and such is the probable conclusion) that the grievor procured the theft of Company property - in which case there would surely be no doubt that discharge was justified - what the grievor did was equally as serious. He was knowingly in possession of property which, as I find, he knew to have been stolen from the Company, and was obviously in breach of his obligations as an employee. What he did was done knowingly, and it was not simply a matter of a "lack of judgment in not resisting the purchase". His offence was the equivalent of theft directly from the company, and there was no excuse for it. None of the rather special circumstances which have led to the substitution of a lesser penalty in cases of theft apply here.

Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.