

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1063

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Extra Gang Foreman W. McAree on June 7, 1982, for misappropriation of Company material and misuse of a Company vehicle.

JOINT STATEMENT OF ISSUE:

The Union contends that dismissal is not warranted in the instant case.

The Union further contends that Mr. W. McAree be reinstated to his former position with no loss of seniority and be compensated for loss of pay.

The Company declines the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) H. J. THEISSEN  
System Federation General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL  
General Manager,  
Operation and Maintenance.

There appeared on behalf of the Company:

F. R. Shreenan	- Labour Relations Assistant, CPR, Vancouver
L. J. Masur	- Supervisor, Labour Relations, CPR, Vancouver
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
F. L. Stoppler	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

The grievor did, using a Company vehicle, remove five caboose chairs from Company property. The chairs had been ordered to equip certain outfit cars. Another car was supplied, equipped with a bench and chairs, and the chairs in question were surplus to the requirements of the grievor's crew. The grievor did not arrange for them to be returned to stores, but retained them for use in another outfit car which he hoped would eventually be delivered. He moved them to a

private residence "for storage".

If that were all to the matter, it could be concluded that the grievor's actions, while improper, were not such as to justify discharge. After a certain time, however, the grievor permitted the use of the chairs at a private residence. That was something more than mere "storage", and suggests that the grievor had converted them to his own use. The chairs were, however, clearly marked as the property of the Company, and the grievor appears to have done nothing to remove or cover up such marks. The chairs, it is surely fair to say, were not fine furniture, and their use (while improper) was not, it would seem, damaging.

The grievor's actions were not surreptitious, and he appears to have frankly stated the facts and acknowledged the impropriety. He at first was prepared to resign, but withdrew his resignation when certain recommendations, which he had understood would be forthcoming from the Company, were not made. The grievor has some 9 years' service and an otherwise clear disciplinary record.

In my view, having regard to all of the circumstances, this was a case of misuse rather than misappropriation (insofar as that connotes "theft"). There was not, I think, just cause for discharge, although there was cause for severe discipline, including (having regard to the abuse of responsibility involved), demotion. My award in this matter is as follows: that the grievor be reinstated in employment forthwith, in the next lower grade to that of Extra Gang Foreman, without compensation but without loss of seniority.

J. F. W. WEATHERILL,  
ARBITRATOR.