

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1089

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Machine Operator J. D. G. Gautreau.

JOINT STATEMENT OF ISSUE:

Following an investigation Machine Operator Gautreau was dismissed from the Company's service for the theft of 10 litres of type "A" automatic transmission fluid from the Killam Drive Work Equipment Shop at Moncton, New Brunswick on 29 April 1982.

The Union contends that Machine Operator Gautreau was unjustly dismissed for the alleged theft and requests that the grievor be reinstated.

The Company declined the request.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Assistant Vice-President  
Labour Relations.

There appeared on behalf of the Company:

|                |   |
|----------------|---|
| K. J. Knox     | - Manager Labour Relations, CNR, Montreal           |
| W. W. Wilson   | - Manager Labour Relations, CNR, Moncton            |
| W. G. Kingston | - Superintendent Work Equipment Shops, CNR, Moncton |
| G. M. Sponagle | - Foreman Work Equipment Shops, CNR, Moncton        |
| G. P. Beers    | - Stores Attendant IV, CNR, Moncton                 |
| R. W. Crossman | - Crane Operator/Relief Foreman, CNR, Moncton       |
| P. E. Scheerle | - System Labour Relations Officer, CNR, Montreal    |
| W. D. Agnew    | - Labour Relations Officer, CNR, Moncton            |
| A. C. Cormack  | - Employee Relations Officer, CNR, Moncton          |

And on behalf of the Brotherhood:

|                |  |
|----------------|--|
| Paul A. Legros | - System Federation General Chairman, BMWE, Ottawa |
| J. Roach       | - General Chairman, BMWE, Moncton                  |
| F. L. Stoppler | - Vice-President, BMWE, Ottawa                     |

#### AWARD OF THE ARBITRATOR

The evidence before me establishes, on the balance of probabilities and on clear and cogent evidence, that the grievor did steal the Company's property as alleged.

The grievor, while on layoff, went to the Company's shops, went to the stores issuing wicket, and requested 10 litres of transmission fluid which he charged to a particular work order. The Stores Clerk gave him the transmission fluid, and shortly thereafter the grievor was seen leaving the shops, taking with him what appeared to be several cans of fluid or oil. Shortly thereafter suspicion became aroused. The Shop Foreman, who had noticed the grievor in the area of the stores issuing wicket but had thought nothing of it, was queried by another foreman as to whether the grievor was not laid off. He then went to the Stores Clerk, who said that he had given the grievor the supplies referred to, and showed the work order. The Shop Foreman realized that the supplies were not related to the work order.

The transmission fluid was never recovered. The grievor was charged under the Criminal Code, was tried and was acquitted. The acquittal, it would seem, turned on the hesitation which the Stores Clerk had with respect to identifying the grievor as the person to whom the transmission fluid was issued. Given that the standard of proof in criminal cases is that of proof beyond a reasonable doubt, and given the evidence before the Court, acquittal would appear to have been, with respect, the right verdict.

In the proceedings before me, however, the standard of proof is different, and the evidence is different. The standard of proof, of course, is that of the balance of probabilities. Even on the evidence which the Stores Clerk gave at the trial, together with the other evidence before me, it would seem clear, on the balance of probabilities, that the grievor took the transmission fluid. In the instant case, however, the Stores Clerk's evidence was quite clear. He did not contradict the evidence given at the trial, but he was ?nhesitant whereas there he was hesitant. His explanation for that, which I think is understandable, is that where a criminal conviction and sentence were involved, he was sensitive to employee pressures to be "a little less sure" about the matter. I am satisfied that in the proceedings before me the Stores Clerk spoke the truth.

I find, then, that the grievor did steal the Company's property. There are no special circumstances which would support any other disciplinary action than that of discharge, for which I find there was just cause. The grievance is therefore dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.