

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1679

Heard at Montreal, Tuesday, September 8, 1987

Concerning

CANADIAN NATIONAL RAILWAYS

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:

Appeal the severity of the discipline assessed the record of Mr. M.R. Christoff of Port Robinson, Ontario effective 8 August 1986.

JOINT STATEMENT OF ISSUE:

In May of 1986 the Company was informed by Sun Life of Canada that it had reason to believe Mr. Christoff had been double billing Sun Life for payment for prescription drugs under the Extended Health Care Plan for Schedule Employees, between December 1984 and April 1986.

On 8 August, 1986 an Employee Statement was obtained from Mr. Christoff, at which time he admitted to submitting duplicate claims to Sun Life on 20 different occasions and, that he altered the supporting receipts to obtain extra money.

Mr. Christoff was held out of service 8 August, 1986 and was subsequently discharged effective 8 August, 1986.

The Brotherhood contends that the discipline assessed was unwarranted and that a lesser penalty should apply. It requests that Mr. Christoff be reinstated to full employment with compensation for lost wages, seniority and benefits from the date of suspension and termination.

The Company declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
National Vice President

FOR THE COMPANY:

(SGD.) JUNE PATRICIA GREEN
FOR: Assistant Vice President
Labour Relations

There appeared on behalf of the Company:

M.M. Boyle	- System Labour Relations Officer, Montreal
W.W. Wilson	- Manager Labour Relations, Montreal
S.F. McConville	- System Labour Relations Officer, Montreal

S. Grou - Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

T.N. Stol - Regional Vice President, Toronto
M. Christoff - Grievor
A. Cerrilli - Observer, Regional V.P., Winnipeg

AWARD OF THE ARBITRATOR

It is not disputed that Mr. Christoff defrauded the Company by receiving \$502.46 for illegitimate claims for the cost of prescription drugs. In the Arbitrator's view, absent mitigating circumstances, his conduct, which involved a plan of deliberate deception carried out over a period of a year and a half, would, prima facie, justify the termination of his employment. In this case, however, two factors must be weighed. The first is that the grievor is an employee of close to 25 years service with a good prior disciplinary record. The second is whether the discharge of Mr. Christoff is discriminatory when compared to the treatment by the Company of other persons in similar circumstances.

The Union directed the Arbitrator to the comparable case of Lesley Joseph Szabo, a Supervisor employed by the Company as a Transportation Assistant at London, Ontario. In that case, using a Company credit card, Szabo purchased gasoline for his own automobile on four occasions, defrauding the Company of an amount in excess of \$100.00. For this he was criminally convicted. Szabo's employment was not terminated, however. Apparently in consideration of his 32 years' service, and the quality of his prior record, the Company suspended him without pay for 6 months and reinstated him to a demoted position within the bargaining unit. In the Arbitrator's view that is not an unreasonable disposition of a case of this kind, having particular regard to the long service of an employee with an otherwise positive record.

In the instant case I must agree with the Union that the cases are closely comparable, and that it would be discriminatory to deprive Mr. Christoff of the opportunity for rehabilitation given to Supervisor Szabo. While it is true that the demotion of Szabo imposes an ongoing penalty, in the instant case Mr. Christoff has been out of service for over one year. His reinstatement without compensation, would therefore result in treatment roughly comparable to Mr. Szabo's. For these reasons the Arbitrator determines that the grievance should be allowed. Mr. Christoff shall be reinstated into his employment, without compensation or loss of seniority. The Arbitrator accepts Mr. Christoff's representation at the hearing that he will never again compromise the trust that must be at the basis of his employment relationship. Needless to say, should he fail in that undertaking in the future, Mr. Christoff will face the severest of consequences.

MICHEL G. PICHER
ARBITRATOR