

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1835

Heard at Montreal, Thursday, 13 October 1988

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Reinstatement of Locomotive Engineer R. A. Ramsay, Winnipeg.

JOINT STATEMENT OF ISSUE:

Following an investigation, Locomotive Engineer R. B. Ramsay was dismissed "for fraudulently submitting wage claim for monies you were not entitled by deliberately falsifying wage tickets for tours of duty on the Winnipeg Beach Subdivision in order to enhance your earnings on July 18, 1986."

The Brotherhood has appealed the dismissal and has requested that Locomotive Engineer Ramsay be reinstated without payment for time lost.

The Company has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(Sgd) T. G. HUCKER
General Chairman

FOR THE COMPANY:

(Sgd) J. M. WHITE
General Manager
Operation & Maintenance - HHS

There appeared on behalf of the Company:

D. A. Lypka	- Supervisor, Labour Relations, Vancouver
B. P. Scott	- Labour Relations Officer, Montreal
J. D. Huxtable	- Assistant Supervisor, Labour Relations
L. J. Guenther	- Assistant Supervisor, Labour Relations
F. O. Peter	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker - General Chairman, Calgary

AWARD OF THE ARBITRATOR

It is not disputed that Locomotive Engineer Ramsay did falsify trip tickets as alleged. He did so knowingly, for the sole purpose of enhancing his earnings for the trip in question.

Are there any reasons to mitigate against the penalty of discharge in this case? Having commenced employment with the Company in December of 1974, in relative terms the grievor is something less than an employee of extremely long service. As a running trades employee the grievor works in a form of service whose remuneration is based in part on time and mileage in circumstances which cannot be directly supervised by his employer. The grievor is, therefore, in a position of substantial trust with respect to the submission of trip tickets claiming the payment of his wages.

In the instant case the conduct of the grievor is a form of theft. It is trite to say that such conduct, particularly in a position where a relationship of full trust is essential to the nature of the job, the most serious measure of discipline is justified. Decisions resulting in dismissal have consistently been upheld by this Office in such circumstances (see CROA 461, 478, 899, 1472 and 1474).

In the circumstances the Arbitrator is compelled to conclude that the Company had reasonable grounds to terminate the grievor's services, in light of his deliberate act of fraud. No compelling mitigating circumstances are made out, and the grievance must therefore be dismissed.

November 10, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR