

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1942

Heard at Montreal, Tuesday, 12 September 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Truck Driver/Clerk C. Snyder.

JOINT STATEMENT OF ISSUE:

On or about August 15, 1988, Truck Driver/Clerk Snyder was dismissed for "unauthorized order and procurement of material from Company stores and for misappropriation of this material for personal use, at Winnipeg Maintenance of Equipment Shop, July 14, 1988.

The Union contends that the discipline assessed was too severe in that the grievor ordered and procured the material in accordance with Company practices and the utilization of Company material was not misappropriation of this material and requests that the grievor be reinstated with full seniority and compensated for all benefits and wages lost as a result.

The Company denies the Union's contention and declines the Union's request.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD) M. L. McINNES
SYSTEM FEDERATION
GENERAL CHAIRMAN

(SGD) J. M. WHITE
GENERAL MANAGER
OPERATION & MAINTENANCE WEST, HHS

There appeared on behalf of the Company:

B. Mittleman	- Counsel, Montreal
D. A. Lypka	- Supervisor, Labour Relations, Vancouver
J. D. Huxtable	- Assistant Supervisor, Labour Relations, Vancouver
L. G. Winslow	- Labour Relations Officer, Montreal
G. Churchill	- Manager, Work Equipment Repair Shop, Winnipeg

And on behalf of the Brotherhood:

M. Gottheil	- Counsel, Ottawa
M. L. McInnes	- System Federation General Chairman, Port Moody
K. Deptuck	- General Chairman, Winnipeg

D. D. Miller - Witness
C. L. Snyder - Grievor

AWARD OF THE ARBITRATOR

The evidence establishes that on July 14, 1988 the grievor was observed by two supervisors as he loaded folded packing boxes into the trunk of his car. It is not disputed that as Truck Driver/Clerk at the Logan Shops in Winnipeg, the grievor is authorized to requisition material for the shops, in some cases without any supervisory authorization. The evidence discloses that the boxes being loaded by Mr. Snyder had previously been requisitioned by him without prior approval. The grievor explained to the supervisors that he was borrowing the boxes to assist his brother in moving into a new house, and was going to return them immediately thereafter. He also explained that he intended to advise a supervisor and get his approval prior to leaving at the end of the afternoon. The Company rejected the grievor's explanation and discharged him for unauthorized procurement and misappropriation of materials for his personal use.

The burden of proof in this matter is upon the Company. Seen from its perspective, the circumstances surrounding the incident naturally raised suspicion. It was not commonplace to requisition new packing boxes to the Logan Shops, as boxes used for deliveries from that location were generally obtained from stocks of used boxes both at the Logan Shops and from the Roadway Stores, approximately one mile distant. It was therefore unusual to see new packing boxes being ordered into the Logan Shops without discussion with management, much less to see them being loaded into an employee's private vehicle without any prior discussion or authorization from a supervisor.

In the Arbitrator's view, however, the factors that give rise to suspicion do not fully reveal the circumstances surrounding the incident. Firstly, it is not disputed that it is quite common for employees and supervisors alike at the Logan Shops to borrow materials and equipment from the Company to take home on a short term basis for their personal use. This is typically done, for example, with tools. The grievor had himself in the past borrowed equipment with permission, one example being the loan of a chain saw.

The evidence also establishes that boxes were used with some frequency at the Logan Shops, and with still greater frequency out of the Weston Shops. There is, in other words, no suggestion that the ordering of those materials was wasteful or entirely inappropriate to the Company's purposes.

Thirdly, the evidence reveals what the Arbitrator judges to be a relatively lax attitude towards the use of Company materials at the Logan Shops generally, an attitude which extended into the ranks of management. For example, it is not disputed that annually several supervisors, including the supervisor who apprehended and brought the accusation against the grievor, requisition materials from the Company's stores for the purpose of utilizing them on a private,

personal fishing trip. The evidence also reveals that the same supervisor once availed himself of the services of the grievor, on Company time, to deliver a motor which he owned to a local commercial service and repair shop to be fixed. As a general matter, therefore, without ascribing improper motives, there was something of a blurring of the lines in respect of the use of Company equipment and materials at the Logan Shops for personal use. To the extent that the practice in that regard extended to members of management, there appears to have been an atmosphere of permissiveness, if not condonation, which was open to misinterpretation on the part of an employee in the position of Mr. Snyder.

In the end the merits of this grievance must turn on whether the Arbitrator accepts Mr. Snyder's explanation of his actions. Upon a careful review of the whole of the evidence, including his own demeanor as a witness, I am satisfied that the grievor did not have a sinister intention to misappropriate the Company's property when he loaded the boxes, valued at approximately \$50.00, into the trunk of his car to assist in his brother's house move. Contrary to the suggestion of the Company's counsel, the Arbitrator cannot find anything surreptitious or stealthy in the way in which Mr. Snyder proceeded. The requisition form which he made out was in keeping with normal practice, and according to his own undisputed evidence he had once previously ordered new boxes, albeit for a purpose other than shipping.

Having concluded that I accept the grievor's explanation as credible, however, does not entirely exonerate his actions. By his own admission, there was no immediate need for new packing boxes at the Logan Shops. The order was inspired by his own initial idea of borrowing such boxes for his brother's purposes, based partly on the rationale that they would thereafter be available for some use in the shops. In other words the evidence establishes that but for the needs of Mr. Snyder's brother, the order for the boxes would not have been placed. To that extent the grievor misused his authority to order materials for purposes essentially unrelated to his employer's interests. While his ultimate intention was, as I have found, not to steal the boxes, he plainly engaged in an unauthorized and inappropriate exercise of the privileges of his position.

The issue becomes the appropriate measure of discipline in the circumstances. Mr. Snyder is an employee of five years' service without any prior disciplinary record. There is no suggestion that he was other than a good and reliable employee prior to the incident giving rise to his dismissal. On the whole, given the Arbitrator's view that Mr. Snyder did not have an intention to steal the material, I am satisfied that discharge is an excessive measure of discipline in the circumstances. On the other hand, the facts of the case give serious pause as to why, as the Brotherhood argues, he should receive compensation for any part of the period since his termination. As noted above, in a very real sense Mr. Snyder went outside the requirements of his job and the Company's needs to order the new packing boxes, prompted entirely by personal motives. Neither at the stage of requisitioning the boxes from the Weston Shops Stores, nor at any time prior to loading them into the truck of his car, did he seek authorization from any supervisor. Given that it was unusual for new boxes to be ordered to the Logan Shops, by his failure to

clear any of his actions with a supervisor, a course which he knew or reasonably should have known was improper, Mr. Snyder created a strong impression of a calculated scheme to misappropriate Company property. In the Arbitrator's view the Company cannot be faulted for taking a skeptical view of Mr. Snyder's actions. To that extent he became very much the author of his own misfortune.

In the instant case I am satisfied that fairness is served by an order returning the grievor to his employment, without compensation. The Arbitrator therefore orders that Mr. Snyder be reinstated forthwith into his employment as a Truck Driver/Clerk, without loss of seniority, and without compensation or benefits.

September 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR