CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1973

Heard at Montreal, Thursday, 16 November 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal the discharge assessed the record of Mr. M. L. Mongrain of Montreal.

JOINT STATEMENT OF ISSUE:

Between April 1987 and March 1988, Mr. Mongrain, an assistant buyer, exceed his monetary and weight authority on many occasions and falsified work documents in favour of individual suppliers.

On July 12, 1988, Mr. Mongrain attended a formal investigation into "allegations of incompetence and irregular practises".

On July 20, 1988, Mr. Mongrain was discharged "for practises contrary to the methods and procedures of the Purchases and Materials Department, between April 1987 and March 1988".

The Brotherhood contends that the discipline assessed was unwarranted and requests that Mr. Mongrain be reinstated with full compensation and no loss of seniority.

The Company declined the Brotherhood's request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) TOM McGRATH	(SGD) W. W. WILSON
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. St. Cyr	- Manager, Labour Relations, Montreal
M. M. Boyle	- Manager, Labour Relations, Montreal
G. Richard	- Regional Manager, Purchases & Materials, Montreal
D. Rennie	- Labour Relations Assistant, Purchases & Materials, Montreal
S. Summers	- Witness
G. Labrcque	- Witness

And on behalf of the Brotherhood:

R. Moreau	- Regional Vice-President, Montreal
G. Ct	- Representative, Montreal
C. Gaudron	- Witness
M. L. Mongrain	- Grievor

AWARD OF THE ARBITRATOR

Mr. Mongrain, an employee with 26 years' service, worked as an Assistant Buyer for the purchases section of the Purchases & Materials Department of the St. Lawrence Region. He was responsible for the purchase of steel from a number of independent suppliers. On July 20, 1988, the Company dismissed the grievor for practices which it claimed were contrary to the established procedures. In particular, it accused Mr. Mongrain of having falsified certain documents to favour the purchase at excessive prices of various steel products from one supplier in particular, Omni Steel, between April 1987 and March 1988.

It is agreed that an assistant buyer occupies a position which requires exemplary honesty and loyalty concerning the Company's interests. As an assistant buyer Mr. Mongrain was invested with the necessary authority to purchase steel up to a value of $9,000.00 in certain cases. He also had the discretion to purchase up to a limit of 5 tons of steel. All purchases above these limits could only be made with the written authorization of the Buyer, who was his immediate supervisor, or another supervisor with a higher level of authority.

The evidence establishes that, except under certain exceptional circumstances, the assistant buyer was obligated to obtain prices from at least three steel suppliers before effecting a purchase. Normally the order is given to the supplier which presents the lowest price, except is certain emergency cases when the prompt availability of the product is of more importance.

The charges brought against Mr. Mongrain are serious. According to the employer, he was responsible for a number of offences which revealed an abuse of his position, including the falsification of the asking prices from suppliers other than Omni Steel. He is accused of having noted "no quote" on certain order forms to give the impression that no supplier, other than Omni Steel, had the product desired when in reality the supplier did have the specified steel and Mr. Mongrain had never called them. Further, the Company accuses him of having directed orders directly to Omni Steel, at exorbitant prices, without investigating the prices from the other suppliers and without obtaining the permission of his supervisors.

The Union's representative and Mr. Mongrain himself raise a number of questions concerning the quality of the Company's documentary evidence. The Arbitrator acknowledges that in certain of the particulars it is possible to have an explanation which would lead to a conclusion in favour of the grievor. For example, it appears that

on occasion even if a supplier has a specific product in its warehouse, it could refuse to give a quotation to the Company because the quantity of steel being ordered was too small. In such a circumstance, an assistant buyer could legitimately write "no quote" on the order form for that supplier, even though a subsequent inquiry by the Company would reveal that the product was in fact available from the supplier at a cheaper price than that which had been accepted by the assistant buyer.

However, in the opinion of the Arbitrator, the evidence as a whole clearly supports the position of the Company. This conclusion is based on a number of factors, the most important of which is the evidence of Ms. Sandra Summers, the internal sales employee at Drummond McCall, one of the suppliers with whom the grievor regularly conducted business by telephone. The evidence of Ms. Summers is that it was the practice of this supplier to note in a daily ledger all the requests for price quotations received each day in her office. It is agreed that all, or almost all, of the calls coming from CN during the period in question would have been directed to Ms. Summers from Mr. Mongrain. According to Ms. Summers, whose evidence appeared to me to be honest and precise, at the request of CN she checked all of the daily ledger entries which contained requests for price quotes from CN for this period. As a result on a number of occasions there was no record at Drummond McCall to support the claim of Mr. Mongrain, written on his order forms, that he had called this supplier and received a response of "no quote". It is true that there exists a possibility that the date of the call from Mr. Mongrain to Ms. Summers would not correspond precisely to the date of the response received, as is pointed out by the grievor. However, the Arbitrator is satisfied that the detail of Ms. Summers' research into the records in her office, which cover all of the transaction period examined by the Company, gives clear and convincing evidence to the effect that a number of times Mr. Mongrain falsely noted "no quote" from Drummond McCall when the latter had never been called.

The position of the Company is further supported by documentary evidence which demonstrates that in other cases the price quotations from suppliers written by the grievor on his order forms, apart from those of Omni Steel, were contrary to the true prices asked by those companies as revealed in the subsequent investigation of the Company.

All in all, the Arbitrator must conclude that, in accordance with the preponderance of the evidence, the grievor knowingly falsified the quotations as well as the "no quote" responses on the Company's order forms. For the purposes of the grievance it is not necessary to delve into the motives of Mr. Mongrain nor to come to any conclusion concerning the accusation that he favoured one supplier in particular. It is sufficient to conclude, based on the convincing evidence presented, that the grievor failed in honesty and loyalty towards his employer in the execution of his duties, and that these offences had the effect of imposing on the Company unnecessary and excessive expenses. Given the discretion and responsibility of the position of assistant buyer, and the confidence which is placed in those holding this position, the Arbitrator must accept the position of the Company that the discharge of Mr. Mongrain was justified in the circumstances.

For these reasons the grievance must be dismissed.

November 17, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR