

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2194

Heard at Montreal, Thursday, 10 October 1991

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee Sheldon Aucoin was discharged by the Company for alleged theft of light bulbs on or about May 1, 1991.

JOINT STATEMENT OF ISSUE:

The Union asserts that there was no just cause to discharge the grievor. Alternatively, the Union alleges that discharge is too severe and that a lesser penalty ought to be substituted.

The Company's position is that there was just cause for discharge and that discharge was the appropriate disciplinary response.

FOR THE UNION:FOR THE COMPANY:

(SGD.) J. J. BOYCE(SGD.) B. F. WEINERT

SYSTEM GENERAL CHAIRMANDIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

M. Failes-- Counsel, Toronto

D. F. Weinert-- Director, Labour Relations, Toronto

D. Tarsay-- Personnel Manager, Obico Terminal, Toronto

C. Peddle-- Terminal Maintenance Foreman, Obico Terminal, Toronto

And on behalf of the Union:

D. McKee-- Counsel, Toronto

J. Crabb-- Executive Vice-President, Toronto

M. Gauthier-- Vice-President, Montreal

S. Aucoin-- Grievor

#### AWARD OF THE ARBITRATOR

The evidence establishes, beyond controversy, that on May 1, 1991 the grievor placed some nine packages of light bulbs, each containing two bulbs, into his personal gym bag which he left on the maintenance shop floor. It appears that this appropriation was detected by Maintenance Foreman Charlie Peddle, and resulted in the subsequent questioning of the grievor that day and a formal investigation the following day.

During the course of the formal investigation the grievor stated that it was his intention to ask Mr. Peddle's permission to take the light bulbs which were found in his bag and that he was not in fact in the process of stealing them. This, Mr. Aucoin says, was justified in his own mind by the fact that he had personally seen Mr. Peddle give materials to other employees. In particular, he recounted how Mr. Peddle had provided insulation to one employee, primer paint to another and electrical wiring to a third, all for their personal use at home. Mr. Peddle denies ever giving electrical wiring to any employee for his or her personal use. He confirms, however, that he did give insulation to an employee, explaining that it was not Company insulation but rather insulation which he and another employee had recovered from a nearby street where it had fallen from another company's truck. With respect to the paint, Mr. Peddle relates that he had been instructed by his own supervisor to get rid of it, as it was of no use to the Company and would have been difficult to dispose of as a toxic substance.

On a close review of the evidence the Arbitrator is left with substantial difficulty in respect of Mr. Aucoin's explanation of his actions. Firstly, as noted by Counsel for the Company, although Mr. Aucoin was confronted by the Company's officers on May 1, 1991 and discussed the light bulbs with them for some extended period of time, there was no suggestion on his part at that time that he intended to obtain Mr. Peddle's permission to remove them. During the course of his cross-examination Mr. Aucoin sought to explain that omission by reason of an instruction given to him by his Union representative at the outset of the discussions to the effect that he should say nothing further to the Company. However, his examination-in-chief on that point appears contradictory. As Mr. Aucoin related the events of May 1 during his testimony-in-chief he did not indicate that his Union representative, Mr. Armstrong, told him that he should stay silent until the grievor, Mr. Armstrong and the Company's representative were assembled in the maintenance shop and he had been temporarily suspended by Mr. D. Tarsay, the Company's personnel manager at the Obico Terminal. This aspect of Mr. Aucoin's evidence leaves much to be desired.

There are further aspects of the evidence which cast doubt on Mr. Aucoin's explanation as to his intentions. By his own account, not long before the events of May 1, 1991 his supervisor, Mr. Peddle, had accused him of stealing from the Company during the course of an argument about the future exercise of his bumping rights. This was followed, some days later, by a further comment by Mr. Peddle to the effect that he was going to ``get'' Mr. Aucoin, although according to the grievor stronger language was used. On the whole, the relationship between Mr. Aucoin and Mr. Peddle appears to have been marked by something less than mutual trust and good feeling. Given that background, it seems the more implausible that the grievor could have had reasonable grounds to expect that Mr. Peddle would readily authorize his taking of a substantial number of light bulbs belonging to the Company and which were not surplus to its needs. Counsel for the Union submits, among other things, that Mr. Aucoin did not in fact steal the light bulbs, as they had not been removed from Company premises when they were found in his gym bag. I am satisfied that by removing the light bulbs from their rightful location, placing them within his bag and concealing them by closing the bag, Mr. Aucoin had taken all necessary steps to gain a degree of unauthorized possession of the light bulbs so as to constitute a misappropriation for his own purposes. As I do not accept his explanation that he intended to seek permission from Mr. Peddle, I am compelled to the alternative conclusion that he had taken the light bulbs for his own and had done so in a deliberate and surreptitious manner, without any colour of right.

In the circumstances the Company was justified in the assessment of a severe measure of discipline. As a maintenance employee, Mr. Aucoin operated with a substantial degree of trust as he had free range over the considerable premises of the Obico Terminal, generally without direct supervision. In the circumstances the Arbitrator cannot reject the submission of the Company to the effect that the underpinnings of a necessary relation of trust fundamental to the grievor's ongoing employment have been destroyed both by his conduct and by his subsequent denial and lack of candour both at the stage of the investigation and at arbitration. There are, in my view, no mitigating circumstances that would justify a reduction of penalty in this case.

For the foregoing reasons the grievance must be dismissed.

October 11, 1991

(Sgd.) MICHEL G. PICHER

ARBITRATOR