

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2342

Heard at Montreal, Thursday, 11 March 1993

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Discharge of Eric Robidoux, Lachine Terminal, on July 4, 1991, for allegation of stealing a sandwich.

UNION'S STATEMENT OF ISSUE:

On June 28, 1991, Mr. Robidoux, while performing his duties at Lachine Terminal, was asked by Supervisor G. Cormier to work overtime and he accepted. Mr. Robidoux went downstairs in the cafeteria for his coffee break. At this time he met the janitor and as he had nothing to eat, he asked the janitor if it was possible for him to take a sandwich and he would tell the Supervisor in charge to put the cost on his bill. Then, the janitor helped him out by pulling the board in order for Mr. Robidoux to get the sandwich out of the storage. Mr. Robidoux went upstairs to tell Supervisor Cormier but when he arrived in the Supervisor's room, Supervisor Cormier told him that he had seen him through the window taking the sandwich and that it was theft. Mr. Robidoux tried to explain what happened but Supervisor Cormier didn't give him a chance to tell about it. Mr. Robidoux never had any intention of stealing the sandwich but just wanted the cost of the sandwich to be put on his bill.

The Union contends that Mr. Robidoux has been illegally and unjustly discharged from his job. The Union also contends that no interview has been held in accordance with article 8 of the collective agreement. For the above-mentioned reasons, the Union requests that Mr. Robidoux be reinstated in his employment and be compensated for all loss of salary and benefits and without loss of seniority.

The Company has denied the Union's contention and declined the request to reinstate Mr. Robidoux. The Company maintains that the dismissal of this probationary employee was made for just cause.

FOR THE UNION:

(SGD.) J. CRABB

EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

R. N. Skelly

Counsel, Montreal

B. F. Weinert

Director, Labour Relations, Toronto

M. Mousseau

Terminal Manager, Lachine

G. Cormier

Dock Supervisor, Lachine

R. Grant

Driver, Quebec

And on behalf of the Union:

K. Cahill

Counsel, Montreal

J. Crabb

Executive Vice-President, Toronto

J. Marr

Vice-President, Saint John

S. Fiset

Witness

E. Robidoux

Grievor

AWARD OF THE ARBITRATOR

The Arbitrator finds that the testimony of Supervisor Gilles Cormier, as well as that of Driver Raymond Grant, was given in an honest and precise way. By contrast, the explanation of Mr. Robidoux who claims, among other things, to have hidden the sandwich which he took from the counter under his sweater as a sign to the cashier that he did not wish to steal it, to be very unbelievable. On the whole, I cannot conclude that the evidence given by Mr. Robidoux is honest, and I must concur with the Company's conclusion to the effect that this probationary employee stole the sandwich in the cafeteria as described in the testimony of Mr. Cormier.

As a probationary employee, the grievor is subject to a less onerous standard concerning the elements of just cause which would justify his dismissal. (CROA\_1491,\_1931,\_2004) In the instant case, I judge that the Company did not act in an arbitrary or discriminatory manner or in bad faith in making its decision, given the conduct of Mr. Robidoux.

For the foregoing reasons the grievance must be dismissed.

March 12, 1993

(Sgd.) MICHEL G. PICHER

ARBITRATOR