

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 2365

Heard at Montreal, Tuesday, 11 May 1993  
concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS  
DISPUTE:

Dismissal of V. Marshall, Yard Clerk, Chauffeur.

JOINT STATEMENT OF ISSUE:

On July 13, 1992, Mr. V. Marshall was investigated for the alleged misuse of Company credit cards. A supplementary investigation was conducted, after which Mr. Marshall was dismissed for fraudulent use of Company credit cards. Since the investigation, Mr. Marshall has declared his guilt in the allegations and is very remorseful. The Brotherhood claims that, based on Mr. Marshall's age, service and good record, he should be reinstated into service.

The Company denied the appeal.

FOR THE BROTHERHOOD:FOR THE COMPANY:

(SGD.) T. N. STOL (SGD.) A. E. HEFT

NATIONAL VICE-PRESIDENTfor: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

J. M. Kelly - Senior Project Officer, Human Resources, Toronto

R. Paquette - Assistant Manager, Customer Service Centre,  
Toronto

P. N. White - Assistant Manager, Customer Service, Toronto

And on behalf of the Brotherhood:

R. Gee - Representative, Toronto

V. Marshall - Grievor

#### AWARD OF THE ARBITRATOR

The grievor is an employee of twenty-seven years' service, who was assigned as a Yard Clerk/Chauffeur at MacMillan Yard at the time of his discharge. The material before the Arbitrator discloses that Mr. Marshall's responsibilities included purchasing gasoline for the crew bus which he was assigned to drive. This he did, in part, at a gas bar at Jane Street and Highway 7, not far from MacMillan Yard. On a number of occasions he was observed also filling one or two empty gas containers, which he charged to the same purchase, and subsequently transferred to the trunk of his car during the course of his night shift. A report of these actions caused the Company to investigate the credit card receipts returned by Mr. Marshall over a two-month period. That exercise also disclosed some twenty-one instances during the two-month period in which the grievor had purchased cigarettes and confectionery items which were shown as "miscellaneous" on the credit card receipt slip. Mr. Marshall denied any fraudulent misappropriation by the use of the Company's credit card when he was first confronted by an investigating police officer. He also denied it when questioned further by his supervisor, and on two further occasions during the course of the Company's disciplinary investigation. It was only after his discharge that Mr. Marshall finally admitted his wrongdoing and expressed remorse for what he had done.

It is well established that absent compelling mitigating circumstances theft is among the most serious of disciplinary infractions, for which the presumptive penalty is discharge. Where it can be shown that an employee's act of theft was a compulsive and isolated gesture out of character with an otherwise trustworthy record of service, there may be a basis upon which an arbitrator might reduce the penalty.

Mr. Marshall is fifty-seven years old. His age, and the length of his service, which is twenty-seven years, would weigh in mitigation of the penalty in his case. Unfortunately, there are aggravating factors in the evidence which go against mitigation. The evidence before the Arbitrator reveals a deliberate, sustained pattern of petty theft over a considerable period of time by Mr. Marshall through the misuse of the Company credit card entrusted to him. That pattern, coupled with his repeated denials and continued attempts to deceive his employer, up to the point of his discharge, raise serious questions about the viability of a continued employment relationship based on trust. That is doubly true where, as in this case, the grievor's employment involves the unsupervised use of a Company credit card, and the regular expenditure of Company funds.

Regrettably, the Arbitrator is compelled to agree with the Company that the facts of the case at hand are strikingly similar to those disclosed in CROA 1474 and 1788, where a credit card fraud was found to justify the discharge of similarly situated employees. Moreover, in light of the repeated nature of the offenses, it is difficult to escape the conclusion that discharge is appropriate, notwithstanding the grievor's long service. (See CROA 2343.) On the whole, the Arbitrator can find no compelling basis that would justify the reduction of the penalty assessed by the Company.

For the foregoing reasons the grievance must be dismissed.

May 14, 1993 \_\_\_\_\_  
MICHEL G. PICHER  
ARBITRATOR  
... / CROA 2365