

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2368

Heard at Montreal, Thursday, 13 May 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of the discharge of CSC representative Andrew Proussaef, PIN 839655 for having made a fraudulent claim to SunLife for the purpose of obtaining money not entitled to while employed as Service Representative, CSC.

JOINT STATEMENT OF ISSUE:

The grievor made a trip to Greece during the period of time of April 18, 1992 to May 20, 1992. However, the vacation allotted was from April 26 to May 20, 1992. The same day that he departed for Greece he visited a medical clinic and complained of severe stomach ache. As a result, he received medication and a week to recover. He submitted a claim for sickness benefits from April 18 to April 28 and was remunerated accordingly.

On July 2, 1992, an investigation was held in connection with irregularities in weekly indemnity benefits claimed from SunLife for the period between April 18, 1992 to April 28, 1992. A supplemental statement was also required on July 9, 1992 which resulted in the grievor's dismissal.

The Brotherhood contends that this dismissal was unjust. The Brotherhood also contends that since Mr. Proussaef was held out of service without pay from June 11, 1992 to July 2, 1992, it was a violation of article 434.2 of collective agreement 5.1 and requests that the grievor be compensated for all wages lost as a result of being held out of service for more than three days.

The Company declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL

NATIONAL VICE-PRESIDENT
REGION

FOR THE COMPANY:

(SGD.) J. E. PASTERIS

for: VICE-PRESIDENT, ST. LAWRENCE

There appeared on behalf of the Company:

D. C. St-Cyr - Manager, Labour Relations, St.
Lawrence Region, Montreal

O. Lavoie - Labour Relations Officer, St. Lawrence Region,
Montreal

R. Faucher - Labour Relations Officer, St.
Lawrence Region, Montreal

D. Germain - Assistant Manager, Technical
Services, Customer Service Centre, Montreal

A. Godin - Witness

And on behalf of the Brotherhood:

T. N. Stol - National Vice-President, Ottawa

J. Brown - Representative, Montreal

A. Proussaef - Grievor

AWARD OF THE ARBITRATOR

In the Arbitrator's view the Company's decision was correct, in light of the facts available to it, when it decided to discharge the grievor. Moreover, the Arbitrator can find no violation of the collective agreement by virtue of the fact that Mr. Proussaef was held out of service pending the ultimate disposition of his case. The grievor's actions were clearly in the nature of a dismissable offense, and under the terms of article 24.2, he was liable to be held out of service. The evidence discloses a serious error of judgment on the part of a young employee who feigned illness as a means of extending a planned vacation. Unfortunately, when confronted with his actions he compounded them by attempting to fabricate explanations which, in the end, only served to undermine his credibility with his employer. In the result, the decision of the Company to discharge Mr. Proussaef is readily understandable.

It is trite to say that each case must be determined on its individual merits. While bearing in mind that general rules and principles are vital to the operation of the a coherent system of industrial discipline, it must be remembered that each grievance relates to the circumstances of an individual, and must be assessed having regard to all of the factors bearing on that person. While Mr. Proussaef is not a long service employee, his five years of employment with the Company have been without blemish. Moreover, it appears that he has progressed positively through the ranks, and at the time of his dismissal, was occasionally entrusted with lead hand responsibilities.

Without diminishing the seriousness of the grievor's actions and the legitimacy of the Company's concerns, it must be appreciated that arbitrators have long recognized that, in appropriate cases, even a relatively junior employee caught in an act of dishonesty may merit a second chance. In some respects the case at hand is not dissimilar to that considered by Arbitrator Weatherill in Re United Automobile Workers, Local 200 and Ford Motor Co. of Canada Ltd. (1970), 22 L.A.C. 35. In that case, which involved an employee of six years' seniority who was found to have stolen a carburetor, having reviewed the principles stated in Re USW Local 3257 and Steel Equipment Co. Ltd. 1964 14 L.A.C. 356 (Reville), Arbitrator Weatherill found that it was appropriate to return the employee to work after the equivalent of a very extensive suspension, noting that: "... This conclusion is arrived at having regard to the circumstances of the particular case, as they have been stated. It carries no implication that leniency is to be the rule in future cases, or that even isolated acts of theft are anything but very serious matters; it should not be taken as suggesting some sort of "every dog is entitled to one bite" rule."

At the hearing the grievor admitted his wrongdoing, without reservation. There can be little doubt as to the genuineness of his remorse, and the sincerity of his undertaking that he has learned his lesson. The facts which led to his discharge flowed from an isolated and uncharacteristic incident. On balance, having regard to the entire record of the case, the Arbitrator accepts the statement of the grievor and of his union representative with respect to the potential for his rehabilitation if he is given a second chance. He must, however, appreciate that in a case of this kind a second chance is, indeed, a last chance and that any further incident of similar nature must attract the most serious of consequences. For the foregoing reasons the grievance is allowed, in part. Mr. Proussaef shall be reinstated into his employment, without compensation or benefits, and without loss of seniority, with the period between his discharge and his reinstatement to be recorded as a suspension.

May 14, 1993
MICHEL G. PICHER
ARBITRATOR
