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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2495

Heard in Calgary, Wednesday, 15 June 1994  
concerning  
CANADIAN PACIFIC LIMITED

and  
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
[UNITED TRANSPORTATION UNION]

DISPUTE:

The dismissal of Yard Foreman E.B. Truman of Calgary.

JOINT STATEMENT OF ISSUE:

On July 2, 1992., Yard Foreman E.B. Truman of Calgary was dismissed for theft from a customer's consignment as evidenced by his possession of two 24-can flats of Old Milwaukee beer while on duty, a violation of CROR Rule G, June 10, 1992.

The Union submits that Yard Foreman Truman is a long service employee who has never displayed any behaviour similar to this incident in his career, and that this is a single isolated incident for which he has shown remorse, taken responsibility and learned form. The Union asks that these mitigating factors be reviewed, and requests that consideration be given to reinstatement into corporate service on compassionate grounds.

The Company has refused this request.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) L. O. SCHILLACI

(SGD.) M. E. KEIRAN

GENERAL CHAIRPERSON

FOR: GENERAL MANAGER, OPERATIONS &

MAINTENANCE, HHC

There appeared on behalf of the Company:

M. E. Keiran - Manager, Labour Relations, Vancouver  
R. N. Hunt - Labour Relations Officer, Vancouver  
Kosar - General Yardmaster, Calgary

And on behalf of the Union:

L. O. Schillaci - General Chairperson, Calgary  
L. H. Olson - National President, UTU-Canada, Ottawa  
B. L. McLafferty - Vice-General Chairperson, Moose Jaw  
S. B. Keene - Vice-General Chairperson, London  
J. Tickell - Office Manager, UTU, Calgary  
A. Foltenik - Secretary, UTU, Calgary  
D. C. Curtis - General Chairman, BofLE, Calgary  
E. B. Truman - Grievor

AWARD OF THE ARBITRATOR

It is admitted that Mr. Truman stole two cases of beer from a box car while on duty on June 10, 1992, while working as a yard foreman in Alyth Yard. He concealed the beer in the cab of the trailing diesel unit of his yard consist. When it was discovered there by Relieving Diesel Inspector T.P. Vogels. Mr. Truman

admitted to Mr. Vogels that the beer was his and asked him "... to keep it quiet ...". It does not appear disputed that Mr. Truman then removed the beer from the locomotive, loaded it into the rear of his car, which was exceptionally parked nearby, and disposed of it.

Later, during the same tour of duty, when Deputy Superintendent DeGirolamo proceed to the yard to interview the crew, Mr. Truman related to him that he had indeed had an earlier conversation with Mr. Vogels, but that the two cases in question were soft drinks which he had purportedly taken into the yard for the purpose of selling to employees. He maintained the same during the course of the Company's disciplinary investigation. In the end, the Company accepted the account of events related by Mr. Vogels, and dismissed Mr. Truman. It may be noted that Mr. Vogels' account was corroborated by the fact that the consignment of beer in the box car in question was indeed found to be missing two cases of beer, although these were never found.

Following his discharge, and during the course of the grievance procedure, Mr. Truman admitted to the Company that he had in fact stolen the beer from the box car. Noting that the grievor had finally "come clean", the Union submits that he should be reinstated into his employment on compassionate grounds. It argues, in part, that the theft in question was an uncharacteristic aberration of conduct which occurred on the spur of the moment and that it should not result in the discharge of an employee of twenty-five years' service.

While the Arbitrator is not without sympathy for the hardship visited upon Mr. Truman by these events, an analysis of the factors which must bear on his request for reinstatement suggests a case that is less than compelling. Firstly, the grievor's record is not impressive. It stood at forty demerits at the time of the incident giving rise to his discharge, with the result that the assessment of twenty demerits would have placed him in a dismissable position, in any event. Further, as noted by the Company, Mr. Truman had two previous convictions which are theft related, the most recent being the possession of stolen goods valued at more than \$200.00 in February 1980. While that event may be relatively distant in the past, it does tend to undermine the suggestion that what occurred on June 10, 1992, was entirely out of character.

Perhaps most importantly, the Arbitrator is troubled by the extent to which the grievor was prepared to engage in fabrication and deception of the Company after the event, during the course of the investigation. The fact that Mr. Truman was willing to fashion and perpetuate a lie, even in the face of the contrary account of Mr. Vogels, whatever his motivation may have been, also undermines the argument of the Union that this case merely involves a momentary or isolated lapse of honesty by an otherwise trustworthy employee.

It is trite to say that the theft of property from an employer, or in the case of a public carrier, from the employer's customer, is among the gravest of industrial infractions, meriting the most serious disciplinary consequences. In the case at hand the theft of the beer by the grievor further placed him in violation of CROR Rule G which prohibits the possession of alcoholic beverages at work. While the offence in respect of Rule G may be technical, as there is no indication that the grievor

intended to consume the beer, it does further call into question the level of judgment exercised by Mr. Truman in the circumstances.

Nor can the Arbitrator accept the suggestion expressed by Mr. Truman at the hearing, that persons in his circumstances simply do not appreciate the severity of the consequences of theft. As the record reveals, it is clear from his initial conversation with Mr. Vogels when he was first discovered in possession of the beer, that Mr. Truman knew that his job was in jeopardy. When the case is viewed in its entirety, the Arbitrator cannot justify the substitution of a lesser penalty on the sole grounds of compassion. In light of Mr. Truman's prior disciplinary record, and most particularly of the extended pattern of deception and concealment in which he engaged, the decision of the Company that the bond of trust between himself and his employer has been broken cannot be ignored. Any possibility of a compassionate reinstatement on conditions, perhaps including a bridging period to early retirement must, in my view, be a matter for discussion between the parties in these circumstances, and should not be imposed by an arbitrator.

For all of the foregoing reasons the grievance must be dismissed.

June 21, 1994

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MICHEL G. PICHER  
ARBITRATOR