

Canadian Railway Office of Arbitration  
Case No. 2642  
Heard in Montreal, Wednesday, 14 June 1995  
concerning  
InterLink Freight Systems  
(Canadian Pacific Express & Transport)  
and  
Transportation Communications Union  
ex parte  
Dispute:

The dismissal of employee Armand Laganière.

Ex Parte Statement of Issue

On February 16, 1995 the Company dismissed Mr. Laganière for having used the Company's taxi pass for personal reasons.

The Union holds that the sanction is extreme because Mr. Laganière has more than 14 years in service and a good disciplinary record.

The Union has asked that the Company reintegrate Mr. Laganière without loss of seniority and salary.

The Company rejected the Union's request.

for the Union:

(sgd.) A. Dubois

Divisional Vice-President

There appeared on behalf of the Company:

R. M. Skelly- Counsel, Montreal

B. F. Weinert - Director, Human Resources, Toronto

M. Mousseau - Manager, Regional Operations, Montreal

D. Prevost - Terminal Manager, Montreal

M. Lapointe - Manager, Administration, Montreal

And on behalf of the Union:

K. Cahill - Counsel, Montreal

A. Dubois - Divisional Vice-President, Montreal

A. Laganière- Grievor

award of the Arbitrator

It is not disputed that the grievor, Mr. Laganière, used Company funds by the illegal use of some six taxi coupons in September 1994. The Company claims that this is an act of dishonesty which breaks forever the bond of trust between employer and employee, and that his discharge is, therefore, justified. The Union pleads certain mitigating factors, and submits that there is reason to reduce the disciplinary penalty imposed on the grievor.

Mr. Laganière relates that in April of 1994 he made an exchange of taxi coupons with a Toronto driver. The latter had offered to give to Mr. Laganière a quantity of taxi coupons for the Lachine Taxi Company in exchange for similar coupons redeemable at a taxi company in Pickering, Ontario. It is agreed that those coupons are supplied to long haul drivers to allow them round trip passage to a particular motel where they could stay during their stopover at the away from home terminal, such as at Lachine for drivers from Toronto or at Pickering for drivers from Montreal.

The evidence establishes that one hundred Lachine coupons, stamped for the "Motel Fleur de Lys" disappeared in the autumn of 1994. Some of those coupons, which were numbered in sequence,

were used by someone who utilized them to obtain taxi transport from his residence in Lachine to a bar called "Carlos". The Company learned of this usage from a report furnished by the taxi company, which reported the use of the coupons which had disappeared, and which the taxi company was able to identify because of their numbers.

Before the Arbitrator the grievor admitted to having used the coupons in question as claimed. He does not deny that this happened during a medical leave during which the grievor was unable to drive his own vehicle due to the effect of a neurological illness for which he was hospitalized for some weeks. Mr. Laganière admits before the Arbitrator that he is guilty of the behaviour with which he is charged. He states that he was not himself at that time because of his medical and personal problems which he suffered at that time. Further, he states that he suffers from some memory blanks concerning the events of that time. According to his evidence, he did not know the identity of the Toronto driver who provided him with the coupons in question. Counsel for the Union submits that in the circumstances discharge was excessive discipline, having regard to the grievor's fourteen years' service and his prior discipline record.

The Arbitrator cannot accept that position. It is clear, from the grievor's own evidence, that he agreed to the exchange of taxi coupons with the driver from Toronto in April of 1994. At that time he was lucid, and not suffering any illness which would affect his judgement. It is undeniable that his possession of those coupons was not for any legitimate purpose. Furthermore, Mr. Laganière was not honest during the Company's investigation. At first he categorically denied having visited the bar "Carlos", even though he had at that time. Faced with incontrovertible proof, he admitted having frequented that bar and that it was possible that he had frequented it on the days in question.

Unhappily the Arbitrator cannot conclude that Mr. Laganière presents credible evidence concerning his intentional usage of the taxi coupons. No medical evidence was entered in evidence to support his claim that his conduct was influenced, either by his physical or mental conditional, or by the medication that he was taking. In April 1994, well before his illness, by his own evidence he knowingly obtained the coupons which could have no other purpose than to defraud his employer. Moreover, he was not honest with the Company in the first stages of its inquiry. In the circumstances, the Arbitrator does not consider that it is possible to draw from the grievor's deceitfulness and actions a conclusion that in the future he will be reliable. Unfortunately, I must accept the position of the Employer to the effect that the bond of trust between the grievor and the Company is broken, and that the mitigating factors are not sufficient to reduce the discipline imposed (CROA 1165, 1737, 2194 and 2442).

For these reasons the grievance must be dismissed.

June 16, 1995 (signed) MICHEL G. PICHER

ARBITRATOR