

- 2 -

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2669

Heard in Calgary, Wednesday, 15 November 1995

concerning

Canadian National Railway Company

and

Canadian Council of Railway Operating Unions
(United Transportation Union)

DISPUTE:

Appeal of the discharge of Yard Conductor K.M. Dumont of Edmonton, Alberta from Company service effective January 19, 1995 for fraudulent submission of time returns on November 27 & 28, 1994.

JOINT STATEMENT OF ISSUE:

On January 06, 1995 the Company held an investigation in regards to time claims submitted for payment by the grievor, K.M. Dumont of Edmonton, Alberta on November 27 & 28, 1994. The grievor submitted payment for these two days however did not work them. At the time of this incident the grievor was on modified duties as a result of a head-on collision and could not perform his regular duties as yard conductor. The Company discharged the grievor effective January 19, 1995 for fraudulent submission of time returns on November 27 & 28, 1994.

The Union's position is that discharge of the grievor is too severe and requests that he be reinstated without loss of earnings and that his record be made whole. The grievance was submitted to the Company at Step III of the grievance procedure on January 23, 1995. The Company declined the Union's grievance on October 11, 1995.

FOR THE Council: FOR THE Company:

(SGD.) J. W. Armstrong(SGD.) R. Rennie

General Chairperson for: Senior Vice-President, CN West

There appeared on behalf of the Company:

S. Blackmore- Labour Relations Assistant, Edmonton

J. Torcia - Manager, Labour Relations, Edmonton

J. Dixon - Assistant Manager, Labour Relations, Edmonton

B. Barber - Labour Relations Officer, Edmonton

S. Michaud - Labour Relations Officer, Edmonton

R. Wagner - Superintendent, Edmonton

And on behalf of the Council:

J. W. Armstrong - General Chairman, Edmonton

M. Eldridge - Vice-General Chairman, Edmonton

K. M. Dumont- Grievor

AWARD OF THE ARBITRATOR

The evidence discloses that Yard Conductor K.M. Dumont was assigned to light duties in late November of 1994. His assignment during that period involved working nights at Clover Bar Yard where he was responsible for performing radar tests on cars being moved during switching operations. It is common ground that on November 27 and 28, 1994 the grievor did not work. However, he filed time claims for both tours of duty, and in fact falsified radar reports for each of the nights in question. He was, therefore, involved in a calculated effort to falsify records in support of a fraudulent wage claim.

In mitigation of what occurred, the grievor submits that he

was driven to irrational conduct by reason of stress which he attributes to a number of causes. These include his involvement in a rail collision which had occurred one month prior, as well as a highway accident in which he was allegedly involved while en route to work on the evening of November 27. There is, however, no medical evidence tendered to support the grievor's claim that his judgment was impaired by reason of a condition of clinical stress. Although the Union filed in evidence a letter of opinion from an individual who, it appears, gives courses in stress management, no weight can be given to that document as proper expert opinion to sustain a conclusion as to the grievor's medical condition in November of 1994. Moreover, when regard is had to the credibility of the grievor's explanation for his state of mind, it does not assist his case that there was apparently no disclosure of the alleged highway accident in which he was involved during the course of the Company's disciplinary investigation, or indeed at any time to the Company or the Union, until approximately one week prior to the arbitration hearing.

As noted, the grievor does not deny that he falsified Company records, both in the form of radar readings and his time claims, as alleged by the employer. Unfortunately, the record discloses that the grievor was previously disciplined for filing a fraudulent time claim in December of 1990, resulting in the assessment of twenty demerits, a penalty which was not then grieved. In the circumstances of this case the Arbitrator must agree with the Company that the following comments which appear in CROA 1835 are appropriate:

"As a running trades employee the grievor works in a form of service whose remuneration is based in part on time and mileage in circumstances which cannot be directly supervised by his employer. The grievor is, therefore, in a position of substantial trust with respect to the submission of trip tickets claiming the payment of his wages.

"In the instant case the conduct of the grievor is a form of theft. It is trite to say that such conduct, particularly in a position where a relationship of full trust is essential to the nature of the job, the most serious measure of discipline is justified. Decisions resulting in dismissal have consistently been upheld by this Office in such circumstances (see CROA 461, 478, 899, 1472 and 1474.) In the circumstances the Arbitrator is compelled to conclude that the Company had reasonable grounds to terminate the grievor's services, in light of his deliberate act of fraud. No compelling mitigating circumstances are made out, and the grievance must therefore be dismissed.

In my view the above principles apply foursquare to the case at hand. The grievance must therefore be dismissed.

November 20, 1995

(signed) MICHEL G. PICHER

ARBITRATOR