

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2697

Heard in Montreal, 11 January 1996

concerning

INTERLINK FREIGHT SERVICES

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Employee David L. Root was dismissed on July 31st, 1992 for alleged loss of cargo on trailer #5476 on July 15th, 1992.

JOINT STATEMENT OF ISSUE:

Mr. Root grieved that the dismissal was unjust; that trailer #5476 may not have contained a load; that he is not responsible for the loss of cargo; that the trailer sat unattended and unsecured for periods of time; and that the penalty is too severe.

The Union relies upon article 8 and any other relevant article of the collective agreement.

Mr. Root seeks reinstatement with full seniority and full compensation or such other remedy as may be appropriate.

FOR THE UNION:

(SGD.) J. CRABB

EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) B. F. WEINERT

DIRECTOR, EMPLOYEE RELATIONS

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Employee Relations, Toronto
G. Martel	– Witness
F. Lyrette	– Witness
J. Janveaux	– Witness
F. Lalonde	– Witness

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
D. Dunster	– Executive Vice-President, Ottawa
D. Root	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the Company is justified in its view that the grievor was gravely deficient in the discharge of his duties on July 15, 1992. The evidence discloses that the grievor was dispatched to carry a trailer fully loaded with cigarettes, with a value in excess of \$300,000.00, from Toronto to Ottawa. The Arbitrator is satisfied, based on the testimony of Lead Hand François Lyrette, that Company drivers are well aware that in securing such loads upon delivery late at night at the Ottawa Terminal, the trailer is to be backed against the door of an available loading bay on the south side of the terminal building, or alternatively it is to be locked in the garage. That requirement was followed, as Mr. Lyrette says, "without exception". There is no reason to believe that the grievor was not aware that it should be followed. The evidence of Mr. George Martel, which the Arbitrator also accepts, confirms that when the grievor telephoned him in Toronto upon his arrival at the Ottawa Terminal, after 2300 hours, he specifically instructed the grievor to see that his trailer was locked inside the garage at Ottawa. While the grievor and Mr. Martel are disagreed as to whether they had one or two telephone conversations, the grievor's own evidence confirms that he was so instructed by Mr. Martel. The grievor did not follow that instruction, however, and states that he simply backed the unlocked trailer against another trailer in the terminal yard. Shortly thereafter the trailer was discovered, fully stripped of its contents, in an area of the yard reserved for empty trailers.

Counsel for the Company suggests that the evidence points to the grievor's involvement in the disappearance of the cargo, based largely on the short time between the grievor's arrival at Ottawa and the disappearance of the cargo. With respect, the Arbitrator does not consider that it is necessary to make any finding in that regard. It may be noted that the grievor was acquitted, after a trial by judge and jury, of a criminal charge of theft in relation to the disappearance of the cigarettes. In the Arbitrator's view the instant case can and should be resolved solely on the issue of the grievor's alleged negligence on the night in question.

At the time of this incident the issue of contraband cigarettes, and their value in an extremely active market, was a matter of some high profile. As indicated in the evidence of Mr. Martel, as well as Mr. Lyrette, the need for a high degree of security in the transportation of cargos of cigarettes, as well as alcohol, was well known among the Company's drivers. In the Arbitrator's view the grievor has given no good or compelling explanation as to why he did not place the cargo, which he knew to be valuable and vulnerable, in the garage as instructed by Mr. Martel. Even accepting his denial of any involvement in the theft of the goods, it is difficult to square his obvious indifference, if not recklessness, for the safeguarding of the Company's goods with ongoing employment in a position which does require a substantial degree of trust in the handling and protection of such cargo. As is evident from the evidence related above, the Company's loss in this case was substantial, and it could have been avoided by little effort on the part of the grievor.

In the result the Arbitrator is satisfied that the Company did have just cause to terminate the grievor's services. The grievor is not a long term employee and, in light of the gravity of this occurrence, the Arbitrator can find no compelling basis to reverse the decision taken by the employer. For these reasons the grievance must be dismissed.

January 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR