

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2706

Heard in Montreal, Thursday, 15 February 1996

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. A. Broomfield for theft of Company property.

COMPANY'S STATEMENT OF ISSUE:

On August 15, 1995, the grievor was dismissed for "theft of Company property as evidenced by you unauthorized possession of railway ties at your cabin at Buffalo Pound Lake, Saskatchewan, July 13, 1995."

The Union contends that the dismissal of the grievor is excessive and unwarranted in the circumstances given his age, length of service and discipline record.

The Union requests that the grievor be reinstated without loss of seniority.

The Company denies the Union's contentions and declines the Union's request by arguing that the grievor's theft of Company property is one of the most serious offences an employee can commit against his employer and that dismissal was the only appropriate response.

FOR THE COMPANY:

(SGD.) R. M. ANDREWS

FOR: DIRECTOR, ENGINEERING MAINTENANCE

There appeared on behalf of the Company:

D. E. Guerin	– Labour Relations Officer, Montreal
D. T. Cooke	– Manager, Labour Relations, Montreal
R. M. Andrews	– Labour Relations Officer, Vancouver

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D.W. Brown	– Senior Counsel, Ottawa
R. Heinrichs	– General Chairman, Prairie Region
G. Beauregard	– General Chairman, Atlantic Region

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes, beyond dispute, that the grievor, Mr. A. Broomfield, consciously carried out a plan to steal some twenty-five railway ties, valued at over \$800.00, for use at his cottage. This Office has had many occasions to consider the principles which govern the discipline of an employee found to have committed acts of deliberate theft. (See **CROA 255, 1165 and 1631.**) While the Arbitrator appreciates that the grievor is an employee of long service with virtually no discipline registered against his record, it is difficult to bring his actions within the exceptions to the general rule that theft is, *prima facie*, a dismissable offence. His actions were clearly not spontaneous or spur of the moment, nor can the Arbitrator easily accept the Brotherhood's characterization that they represent an isolated, one time occurrence. By the grievor's own admission, he took two separate loads of ties, on two separate occasions, from the Company's premises to his cottage. He admittedly took new railway ties because, as he stated, there were no used ties available which he might have obtained with the Company's permission.

In considering a case of this kind, the Arbitrator must also give some weight to the legitimate interests of the employer in deterring similar conduct by other employees. This is not a case in which the grievor has advanced mitigating evidence of factors such as extreme financial hardship, a belief in colour of right on his part, the clouding of his judgement by reason of medically documented stress or other illness, or that he acted compulsively, on the spur of the moment. As noted by the Arbitrator in **Ad Hoc Award No. 370**, which involved the dismissal of an S&C maintainer with twenty years of discipline free service, "The case of the termination of an otherwise productive and good employee for acts of petty theft is among the most difficult, particularly when the person in question has invested many years of service. By the same token, however, boards of arbitration have long recognized that mutual trust is an essential element of any ongoing employment relationship. Actions which break that bond are, subject to certain recognized exceptions, grounds for ending the employment relationship."

Unfortunately, the above observations apply directly in the case at hand. In the circumstances the Arbitrator does not view the circumstances as mitigating the severity of the grievor's actions. In the result, the grievance must be dismissed.

February 16, 1996

(S)