

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2838

Heard in Montreal, Thursday, 13 March 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Appeal of discharge on behalf of Mr. L. Brooks, PIN 168592.

EX PARTE STATEMENT OF ISSUE:

On October 16, 1996, Mr. Brooks was discharged for an alleged fraudulent claim for time paid and expenses, effective September 23, 1996.

The Union contends that: **1.)** The grievor has been unjustly dealt with by the Company. **2.)** The discipline assessed was excessive and unwarranted in the circumstances. The Union requests that the grievor be immediately reinstated with his previous seniority and that he be made whole for any losses he may have sustained as a result of the Company's actions.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) R. F. LIBERTY

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. Blackmore	– Labour Relations Officer, Edmonton
J. Dixon	– Manager, Labour Relations, Edmonton
S. Michaud	– Assistant Manager, Labour Relations, Edmonton

And on behalf of the Brotherhood:

D. Brown	– Sr. Counsel, Ottawa
R. F. Liberty	– System Federation General Chairman, Winnipeg
K. M. Deptuck	– Vice-President, Ottawa
L. P. Gladish	– General Chairman & Secretary/Treasurer, Winnipeg
P. Davidson	– Counsel, Ottawa
L. Brooks	– Grievor

AWARD OF THE ARBITRATOR

This award is intended to include the reasons for the award in **CROA 2837**, a companion grievance involving the grievor which was heard together with the instant grievance.

Upon a review of the material filed the Arbitrator is satisfied that the course of conduct engaged in by the grievor in relation to the events of July 18 and 19, 1996 represents an irrational departure from the normal course of conduct and responsibility previously demonstrated by Mr. Brooks as an employee. It appears that a combination of anger at the Company because of its refusal to pay his wages and expenses for the date of July 8, 1996, when he was disciplined for having damaged a Company vehicle, and the changing of his work schedule to limit his off-duty time to two days per week, rather than three, thereby substantially curtailing his ability to return home to Brandon, Manitoba from Thunder Bay to be with his family, caused him a considerable degree of stress and anger. As a result, in an action which he does not attempt to now defend, Mr. Brooks used a Company truck to drive from Thunder Bay to his home in Manitoba, notwithstanding that his supervisor had refused him permission to use the vehicle. He also attempted to claim wages for time not worked on July 18, 1996, as a means of recovering the monies of which he felt deprived in relation to the events of July 8, 1996.

In considering the latter incident, the Arbitrator is somewhat disturbed by the grievor's evidence, which stands unrebutted, that his supervisor at Thunder Bay indicated to him that he did not want to see any grievance filed with respect to the discipline assessed against Mr. Brooks, nor any claim for wages and expenses, for his day lost on July 8, 1996. It appears that Mr. Brooks had the impression, not unreasonably in the Arbitrator's opinion, that his supervisor would find ways of exacting reprisals if he should avail himself of his right to grieve under the collective agreement. In the result, unfortunately, the Company emerges with something less than clean hands in the handling of Mr. Brooks' situation. While it is obvious that an indiscretion of his supervisor cannot justify his subsequent actions, the whole of the circumstances do, in my view, tend to have a mitigating impact, for the purposes of assessing the appropriate measure of discipline.

There are also other mitigating factors to consider. Mr. Brooks is an employee of some considerable service, having worked for the Company for some sixteen years. Prior to July of 1996 he had only been disciplined on some four occasions, only one of which can be characterized as a matter of substance, involving rules' violation in a public crossing accident in March of 1990. Significantly, there is nothing in the grievor's record to suggest a pattern of either insubordination or dishonesty in his dealings with the Company. On the whole, I am satisfied that the incidents of July 18 and 19, 1996 are best viewed as an isolated and uncharacteristic course of conduct prompted, although not justified, by several mitigating factors in the Company's treatment of Mr. Brooks at the time. Not insignificant among those is the improper, if not unlawful, threat made to him by a supervisor with respect to the exercise of his rights under the collective agreement. In the result, while I am satisfied that a substantial degree of discipline is merited, I am not of the view that discharge is appropriate.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated forthwith into his employment, without compensation or benefits, and without loss of seniority.

March 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR