CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2864

Heard in Montreal, Tuesday, 10 June 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Mr. Tom Drew, PIN 841990.

EX PARTE STATEMENT OF ISSUE:

On January 3, 1997, the grievor was discharged: "for removing track material from CN property with a CN vehicle while on duty and receiving money for this track material for personal gain."

The Brotherhood contends that: **1.)** the Company has dealt with the grievor unjustly and; **2.)** the discipline assessed was excessive and unwarranted in all the circumstances.

The Brotherhood requests that the grievor be reinstated and compensated for all lost wages and benefits.

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

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Laurendeau	– Assistant Manager, Labour Relations, Montreal
A. E. Heft	– Manager, Labour Relations, Toronto
R. Currier	– Range Officer, CN Police, Toronto
R. Paterson	– Range Instructor, CN Police, Toronto
J. Coleman	– Counsel, Montreal

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
J. Rioux	– General Chairman, Montreal
D. Kring	– Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator discloses, beyond dispute, that Track Maintenance Foreman Drew and Track Maintainer Kring used a Company vehicle on October 29, 1996 to transport several tonnes of scrap steel from Company property to a local scrap yard, where they sold the scrap for amounts totalling in excess of $500.00, which they divided equally. The evidence establishes that the scrap metal was comprised mainly of switch plates, anchors, bolts and spikes. It is common ground that the Company had entered into an arrangement with two contractors to dismantle and remove these and other materials from its property. It appears that the arrangement between the Company and the contractors was that the contractors could claim ownership of any material which they removed. The material collected by Mr. Drew and Mr Kring consisted of scrap metal which had apparently not been removed by the contractors.

The grievor asserts his belief that the contractors had effectively abandoned the scrap material, and that it was therefore available to be taken. The Company's representatives strongly disagree. They maintain that the arrangement with the contractors was such that the ownership of the scrap would pass to the contractors only if it was removed from the Company's property, in keeping with their contract.

The Arbitrator has some difficulty with the position advanced by the grievor. Mr. Drew knew, or reasonably should have known, that the scrap material which he removed from Company property to sell for his personal profit was the subject of some arrangement between the Company and one or more contractors. The decision to simply take the material, during working hours and with the assistance of a Company vehicle, within a relatively short period of days from the time the contractors left the premises, is highly questionable. As an employee of the Company, at a minimum, the grievor had an obligation to make reasonable enquiries of supervisors to determine whether it would be permissible to remove the material and sell it for his own gain. The failure to make any such inquiry tends, if anything, to support the inference that the grievor knew what the answer to such an inquiry would be, and acted in deliberate disregard of and contrary to the Company's best interests.

It is well established in the jurisprudence of this Office that, as a general rule, acts of theft and misappropriation of Company property and funds strike at the root of the relationship of trust which is intrinsic to the relationship between employer and employee. It is also clear that the taking of scrap material without authorization violates the employee's obligation of trust (*see* **CROA 824**). Although Mr. Drew was an employee of some seventeen years' service with a clear discipline record, those mitigating factors do not, in the Arbitrator's view, overcome the compelling conclusion that the Company's decision should not be disturbed.

On the whole, I am satisfied that the Company had just cause to discharge the grievor, and that he was not unjustly dealt with, assuming without finding that that issue would be arbitrable.

For the foregoing reasons the grievance must be dismissed.

June 20, 1997

(signed) MICHEL G. PICHER
ARBITRATOR