

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2993

Heard in Calgary, Tuesday, 10 November 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Machine Operator R. Beaudoin.

EX PARTE STATEMENT OF ISSUE:

On June 2, 1998, the grievor received a form 104 stating that he was being dismissed from Company service for his "improper and unauthorized use of a Company credit card" during the months of August, September and October, 1997. The Brotherhood grieved.

The Union contends that: 1.) The discipline assessed was, in the circumstances, unwarranted and too severe; 2.) At the time of dismissal, the grievor was an outstanding long service employee who, throughout his career, was only ever the recipient of very minor discipline; 3.) Mitigating factors existed which should have served to reduce the discipline assessed.

The Union requests that the grievor be reinstated forthwith without loss of seniority and with full compensation for all financial losses incurred as a result of this matter.

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

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Dragani	– Labour Relations Officer, Calgary
R. M. Andrews	– Manager, Labour Relations, Calgary
E. J. MacIsaac	– Labour Relations Officer, Calgary
D. E. Freeborn	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

D. W. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
Wm. Brehl	– General Chairman, Revelstoke
H. Heinrichs	– General Chairman,
H. Thiessen	– System Federation General Chairman (ret'd)

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor did, on a number of occasions, engage in the fraudulent use of a Company credit card. Specifically, he used credit cards which were in his possession for the purposes of purchasing gasoline for his Company vehicle to obtain cash advances for himself, as well as cartons of cigarettes. The grievor committed such infractions on fifteen separate occasions, appropriating for himself cash and cigarettes valued by the Company at in excess of \$600.00.

It appears that the grievor was first approached by two CP police officers on or about November 21, 1997, at which point he was advised that they were conducting an investigation pertaining to fraud. The officers requested him to provide all of his gas and credit card slips, which he apparently did. Not long thereafter, commencing December 15, 1997 the grievor took a leave of absence from work to undertake a forty day in-patient treatment for drug and alcohol addiction at the Addiction and Rehabilitation Centre of the Salvation Army in Sudbury, Ontario. It appears that he successfully completed that program and has since remained involved in the activities of Alcoholics Anonymous. It is also not disputed that the grievor was eventually charged and convicted of fraud under \$5,000.00 contrary to section 362(1)(a) of the **Criminal Code**, for which he was fined \$500.00 and ordered to pay restitution.

The sole issue in this grievance is the appropriate disciplinary penalty to be assessed. On the grievor's behalf the Brotherhood argues that his acts of criminal fraud were related to his long standing condition as both an alcoholic and drug addict, a problem which the Brotherhood asserts plagued him from his teens. Unfortunately, the documentary record before the Arbitrator concerning Mr. Beaudoin's addictions and whether they in fact bore any relation to the actions for which he was disciplined by the Company is meagre at best. While the documentation provided does confirm, as the Arbitrator readily accepts, that Mr. Beaudoin did complete the in-patient rehabilitation program of the Salvation Army, and does participate in the activities of Alcoholics Anonymous, there is no medical or professional opinion offered which would confirm that the pattern of fraud in which he engaged was prompted by his alcoholism or drug problems, nor is there any elaboration within the material before the Arbitrator with respect to the nature and prognosis of Mr. Beaudoin's alleged drug addiction. When these factors are viewed in combination with the fact that the grievor apparently did not seek rehabilitative assistance until he was aware that the CP police were conducting an investigation of him, there are residual concerns for the fundamental credibility of the position which he brings to this arbitration. More specifically, a person in the position of the grievor bears some onus to give full and compelling account of his problems, preferably with sufficient medical documentation to support a conclusion that the bond of trust essential to the employment relationship can be restored. Regrettably, on the basis of the material provided, the Arbitrator cannot come to that conclusion in this case.

For all of the foregoing reasons the grievance must be dismissed.

November 17, 1998

(signed) MICHEL G. PICHER
ARBITRATOR