CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 882

Heard at Montreal, Monday, November 9th, 1981

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAYS, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Steward K. Cameron, Montreal.

JOINT STATEMENT OF ISSUE:

On July 18 through July 21, 1979, Mr. Cameron was assigned as Steward on the Skyline car of Trains 1 and 2 on a round trip between Montreal and Winnipeg.

On July 31, 1979, a client who had been travelling on that train submitted a written complaint to VIA Rail, criticizing the unsatisfactory quality of the food, the untidiness of the Skyline car and the poor service which he had encountered on July 20 while travelling between Winnipeg and Thunder Bay.

Following a preliminary investigation by the Corporation, Mr. Cameron attended a disciplinary hearing on August 30 and was subsequently dismissed from service for: **1)** gross dereliction of duty; **2)** unbecoming behaviour for a supervisor contrary to sanitary and hygiene regulations; **3)** misreporting revenue for salable take-out items on Trains 1 and 2, ex. Montreal, July 18th and ex. Winnipeg, July 20th, 1979.

At the time of his discharge, Mr. Cameron had 5-1/2 years seniority with VIA Rail and its predecessor, CNR, and no previous disciplinary record.

A grievance was duly filed by the Brotherhood on behalf of Mr. Cameron and processed through to the final step of the internal grievance procedure. The Brotherhood then decided not to refer the grievance to arbitration.

Mr. Cameron filed a complaint with the Canada Labour Relations Board under section 136.1 of Part V of the Canada Labour Code, challenging the Brotherhood's decision not to process his grievance to arbitration. The CLRB granted the complaint and ordered that the Brotherhood submit the grievance to arbitration. The CLRB further ordered that the grievance be heard notwithstanding the time limits set out in the collective agreement. The Board also directed that Mr. Cameron may opt to be represented by independent counsel during the arbitration process, while recognizing that the Brotherhood would assist Mr. Cameron during the arbitration process.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. D. HUNTER	**(SGD.) A. D. ANDREW**
NATIONAL VICE-PRESIDENT	**SYSTEM MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

R. Monette	– Counsel, Montreal
J. De Cotret	– OBS Officer – VIA Quebec, Montreal
A. Leger	– Labour Relations Officer, Montreal

M. Cote – Counsel, Montreal
C. O. White – Labour Relations Assistant, Montreal
D. Fenton – Human Resources Assistant, Montreal
P. Pruneau – Witness

And on behalf of the Brotherhood:

J. Cleveland – Counsel, Montreal
G. Thivierge – Regional Vice-President, Montreal
I. Quinn – Representative, Montreal
P. Garneau – Witness
J. Arseneault – Witness
K. Cameron – Grievor

AWARD OF THE ARBITRATOR

There were three grounds for which discipline was imposed on the grievor. Two of these are admitted, in effect. The grievor was in fact guilty of what I think may properly be described as "gross dereliction of duty" and of "unbecoming behaviour – contrary to sanitary and hygiene regulations". As to the first, it may be said briefly that the grievor, who as Steward was in charge of passenger services on the car in question, was absent from work for prolonged periods (on one occasion causing passengers' breakfasts to be substantially delayed), and allowed the car to remain in a slovenly condition, and passengers to be poorly served, for prolonged periods. That would be cause for the imposition of a substantial penalty. As to the second, the grievor saw fit to wash personal laundry in a kitchen pot in the kitchen of the skyline car, where he could be seen by passengers. This, again, is obviously unacceptable conduct, and would justify a substantial penalty.

The third ground of discipline is perhaps the most serious and, if read as implying not merely a "misreporting of revenue" but an actual misappropriation of funds would, if established, justify discharge. On the evidence before me, the charge of misreporting revenue has not been sufficiently made out.

It is true that the grievor used a system of accounting for revenues from sales on the skyline car which was completely inadequate. On the evidence, there were in fact no systems in place which could be said to control cash sales made on the skyline car. The method of cash accounting followed by the grievor – and, on the evidence, by others in similar situations at that time – was to count the total cash received by himself and any others who made sales and turned over the cash (not accounted for in relation to items sold) to him, and to balance those revenues against the value, as far as it could be ascertained, of items sold. To some extent, the value of items sold could be deduced from the valuation of opening and closing inventory. In some cases, and particularly in the case of "take-out" items produced in the kitchen of the skyline car, this could not be accurately done. The kitchen still did keep some form of record of their production, which could be roughly compared with their supplies, but the correlation of items produced to items sold was only made in a most haphazard manner. In his accounting for cash, the grievor (like others) simply created a figure for "take-out sales" (which he distributed artificially among the various take-out items) which would be sufficient to bring total "sales" into balance with cash received. This was obviously an improper method of accounting, if it can be called that at all.

It was not part of the grievor's job to devise an accounting system, and it must be said that the nature of the operation of the skyline car at that time seems to have lent itself to the abuse in which the grievor indulged. He does not appear to have been acting contrary to instructions, or to have been shown any better method. As to the particular case, it has not been shown that the grievor in fact "misreported revenues". There is not the necessary clear and cogent evidence to establish (on the balance of probabilities),that the grievor in fact received more cash than he purported to account for. The only evidence suggesting that the grievor might have sold items for cash which he did not account for, is the evidence that kitchen production of certain items was in excess of the quantity of "take-out" items shown in the grievors "accounts" as having been sold. Of course the evidence raises a certain suspicion, but it cannot be said, in view of the uncontrolled sales system, that this suspicion falls on the grievor to the exclusion of other members of the crew. It must further be borne in mind that neither the production figures nor the sales figures are very reliable. In the light of these considerations, I am unable to conclude that the grievor in fact misreported revenue. This third ground of discipline is therefore not established.

It may be added that I find nothing in the evidence before me to support any suggestion (apparently made in the course of the grievance procedure), that there was any sort of collusion between other employees seeking to harm the grievor. The kitchen staff, clearly, did not think highly of the grievor, and that view can well be understood in the light of the shortcomings earlier described.

The most serious of the three charges against the grievor has not been made out. It remains that he was guilty of the "gross dereliction of duty" and the "unbecoming behaviour" referred to above. Each of these is an extremely serious offence in the case of a person engaged in passenger service. The grievor having had over five years' service and a clear record, I do not consider that discharge was appropriate, where these offences occurred in the course of one trip. While the penalty should be reduced, the grievor's misconduct was of such a gross nature that I do not consider any award of compensation to be justified.

For the foregoing reasons, it is my award that the grievor be reinstated in employment forthwith, without loss of seniority, but without monetary compensation.

(signed) J. F. W. WEATHERILL
ARBITRATOR