

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 904

Heard at Montreal, Tuesday, January 12th, 1982

Concerning

VIA RAIL CANADA INC.

and

**CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT
AND GENERAL WORKERS**

DISPUTE:

Dismissal of Porter B.G. Green, Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

On March 17, 1981 a CN Police Officer (Special Branch), reported the observations he made while travelling on train 135 from Montreal to Senneterre on Tuesday, March 10.

Among other matters the officer reported that the Porter in Charge, later identified as Mr. B.G. Green, who was assigned to the sleeping car "Exploits River", had sold him sleeping accommodation – Roomette 10. Although the rate for that accommodation was twenty dollars, the passenger was only required to pay ten dollars, and no receipt was issued. Mr. Green later explained that this was done after he noticed the room had not been properly made and also stated that he (Green) paid the remaining ten dollars out of his own pocket.

The grievor was discharged from the service of VIA, effective May 12, 1981 for not preparing car "Exploits River" for services and for misappropriation of Corporation revenues on train 135, March 10.

The Brotherhood contends that the charge of misappropriation of funds has not been proven and has requested that the grievor be allowed to return to work with full compensation and employee rights.

The Corporation has declined the grievance through all steps of the grievance procedure.

FOR THE EMPLOYEE:

(SGD.) J. D. HUNTER
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. D. ANDREW
SYSTEM MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

A. Leger – Labour Relations Officer, Montreal
L. Dixon – Service Supervisor, Montreal
M. Fortin – Manager, Human Resources, Montreal
C. O. White – Labour Relations Assistant, Montreal

And on behalf of the Employee:

G. Thivierge – Regional Vice-President, Montreal
I. Quinn – Accredited Representative, Montreal
B.G. Green – Grievor

AWARD OF THE ARBITRATOR

There is no doubt that the car "Exploits River" of which the grievor was in charge was not prepared – or at least not completely prepared, for travel on March 10, 1981. In particular, Roomette No. 10 was not made up and properly supplied. The grievor was responsible for this omission, and would be subject to discipline on that account.

It has not been shown, however, that the grievor misappropriated any Company revenues in connection with his trip on that day, even although the circumstances relating to the sale of accommodation in Roomette No. 10 and the accounting therefor, are irregular.

At the outset of his presentation, Mr. Thivierge objected to Company exhibit No. 18, being the report of a Company police inspector for March 11, the day after the day in question. That report had, inadvertently, not been shown to the Union, and in my view the application of Article 24.8 of the Collective Agreement would prevent its being entered into evidence at the hearing, although the matter may be debatable. In fact, however, this report is helpful to what I consider to be a true understanding of the circumstances and, I think, explains what took place in a manner helpful to the grievor. While it is, then, convenient to refer to what is set out in Company Exhibit 18 (the alternative would be to posit the same or similar facts as a likely hypothesis), I make no findings of fact with respect to it.

The substantial issue is whether or not the grievor made any sales and in particular, any sales of accommodation - which he did not report. On the night of March 10, in the course of the trip Montreal – Senneterre, there is evidence that an investigating agent purchased sleeping accommodation from the grievor. When the train had left Hervey, the grievor advised the passenger (who had previously requested it), that he could now provide him with accommodations and directed him to Roomette 10. This was an error, because, as has been noted, Roomette 10 was not made up. The passenger nevertheless made use of that accommodation. In the morning, he asked the grievor what the cost was. The grievor replied, "twenty dollars", but (according to his statement), he realized that the room had not been made up, and so charged the passenger ten dollars. The agent's statement is that the grievor said "ten dollars – no receipt". That may well be so. The grievor did not, at that time, fill out a cash fare receipt in form S-79, as he ought to have done. This failure, too, could be occasion for some disciplinary action. Finally, on arrival at Senneterre, the grievor made no report of cash sales. This, it seems, was a usual omission, the grievor retaining the cash in order to be able to make change on the return trip. I do not consider that the failure to report at Senneterre has any significance with respect to the charge of misappropriation of funds.

There is no evidence of any other cash sale being made by the grievor in the course of the trip Montreal - Senneterre.

There is evidence of two cash sales on the return trip. It appears that Roomette No. 10 (no doubt properly made up) was sold from Clova to Montreal, for \$20.00. The evidence of this is the audit coupon of cash fare receipt (S-79) No. 473431. There is no passenger coupon, nor any evidence with respect to the passenger. It is simply the grievor's report of a sale. It further appears that Roomette No. 7 was sold from Senneterre to Montreal, for \$20.00. The evidence for this is the passenger's coupon of cash fare receipt No. 473429. It is supported by the (inadmissible) agent's report to the effect that he bought such accommodation from the grievor on March 11. The audit coupon of this receipt was altered by the grievor, as he admits, to show the accommodation as sold from Senneterre to Hervey. There is no explanation for this, and such change would not appear to have been in aid of any improper scheme.

Again, then, there is the grievor's report (inaccurate as to destination, but correct as to amount) of a sale together, this time, with the passenger's account.

There is no evidence of any other cash sales taking place on these trips. The evidence establishes three sales, two for twenty dollars, one for ten dollars. The ten dollar sale was irregular because the accommodation was not what it should have been. That too ought to have been a sale for twenty dollars. The grievor says that he made up the difference out of his own pocket .

In fact, on arrival at Montreal, the grievor filed two sales reports, and reported sales totalling sixty dollars. He handed over that amount of cash, and received receipts therefor. On one report the grievor accounts for two sales, one from Senneterre to Hervey, confirmed by the audit coupon of receipt No. 473429 (this was the one whose passenger coupon read Senneterre to Montreal) and another from Clova to Montreal, confirmed by the audit coupon of receipt No. 473431. The amount in each case is shown correctly as twenty dollars.

On the other report the grievor shows a sale of accommodation from Senneterre to Hervey, for twenty dollars, supported by the audit copy of receipt No. 473429. This is, of course, a duplication of one of the entries in the other report. There is no reason to think that it is anything other than a reporting error. The grievor did in fact turn over sixty dollars, in respect of three sales and since the evidence is that he only collected ten dollars for one of these sales, it would appear (if there were no other sales) that the grievor did in fact make up the difference out of his own pocket.

While there is a duplication in the sales report, there are in fact audit coupons for three cash sales in evidence, not only numbers 473429 and 473431, which have been referred to, but also No. 473430, which appears to show the sale of Roomette No. 10 from Hervey to Senneterre, on March 10. This would account for the sale, otherwise unreported, of the unmade Roomette No. 10 to the police inspector. Audit coupon 473430 shows a cash sale of twenty dollars. That is the amount for which the grievor accounted.

The cash receipts were, apparently, not made out in the order in which the transactions occurred. That is irregular, and could be a ground of discipline. The grievor suggests that he may have "overflipped" no. 473429 in the receipt book. Whether that happened or not, it is clear that no receipt was made out for the sale of accommodation Hervey to Senneterre on March 10, at the proper time. From all of the material before me, it would appear that receipt No. 473430 represents the grievor's attempt to cover up what he had done with respect to Roomette No. 10 on March 10 (that is, his sale of unprepared accommodation at a reduced rate), by accounting for it as though it were a regular sale. It is to be remembered that he handed over the proper amount of cash for such a sale.

From all of the foregoing, there appears no evidence of an unreported sale, or of a misappropriation of funds. The major charge against the grievor has not been made out, and I find that there was not just cause for his discharge. It remains that the grievor was subject to discipline, not merely with respect to the condition of Roomette No. 10 on March 10, but also with respect to the several irregularities which have been referred to, even though it cannot be said that these irregularities lead to any misappropriation of Company funds.

Having regard to all of the circumstances of the particular case, it is my view that the substitution of a period of suspension is proper. It is accordingly my award that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits, but that his compensation for loss of earnings shall be for the period from and after June 12, 1981.

(signed) J. F. W. WEATHERILL
ARBITRATOR