

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 924

Heard at Montreal, Wednesday, March 10, 1982

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Loss of personal effects while on duty.

JOINT STATEMENT OF ISSUE:

On February 1, 1981, Miss Lydia Leiffer, Take-Out Attendant was assigned to the Take-Out car of the "Petit Train du Nord", operating between Montreal and Mont Laurier, Quebec. On the return trip to Montreal, Miss Leiffer placed her boots under the seats in front of the take out counter. She also placed her coat, hat and personal belongings on the baggage rack above the same seats. Some cars are equipped with lockers for the above purpose but on this particular car there were none.

When the train arrived at Montreal, Miss Leiffer's boots had disappeared.

A grievance was initiated.

The Brotherhood contended that the Corporation should reimburse the sum of \$90. for the loss of Miss Leiffer's boots on the grounds that there were no lockers available on that particular train for employee's personal effects.

The Corporation declined the grievance on the grounds that this particular situation was not valid for handling under the Grievance Procedure and apart from that, there were no signs of negligence on its part in regards to the loss of Miss Leiffer's boots and, as a result, the Corporation should not be held responsible for any reimbursement.

FOR THE BROTHERHOOD:

(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, VIA Rail, Montreal
J. DeCotret – O.B.S. Officer, Via Rail, Quebec
D. Fenton – Human Resources Assistant, Via Rail, Quebec

And on behalf of the Brotherhood:

I. Quinn – Accredited Representative, Montreal
P. Garneau – Witness

AWARD OF THE ARBITRATOR

This is a claim in respect of the loss of an employee's personal property. The claim is based, according to the Joint Statement of Issue, on the grounds that there were no lockers available on that particular train for the employee's personal effects.

The Collective Agreement, however, makes no provision in that respect. Whatever general obligation the employer might be under with respect, say, to safety measures, or whatever might be the case with respect to the general law of negligence, the question in the instant case is not one which arises under the Collective Agreement.

Certainly the employee was not "disciplined" by any action of the employer. Nor, on the material before me, was she improperly discriminated against in that some benefit was withheld from her which was available to others: there have been cases where the Company has compensated employees for loss of or damage to personal property, but those appear to have been cases where the Company determined there were circumstances giving rise to some obligation on its part.

While the Collective Agreement provides that a grievance may be filed where employees claim that they have been "unjustly dealt with", that phrase is to be understood in the context of the grievance procedure under the Collective Agreement. What is contemplated are claims relating to rights or obligations under the Collective Agreement. What was said by the Arbitrator in the **CN Telecommunications Case**, 11 L.A.C. (2d) 152 (Rayner) with respect to the phrase "unfair treatment" in a similar Collective Agreement provision, applies equally here.

In any event, even it were open to the employee to grieve in this respect, such a grievance may not proceed to arbitration. By Article 25.2, grievances "concerning the interpretation or alleged violation of this agreement or an appeal by an employee that he has been unjustly disciplined or discharged" may be referred to Arbitration. This is not such a case.

For the foregoing reasons, the grievance is not arbitrable and must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR