

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 979

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The dismissal of A. Simard, Waiter, Montreal, Quebec, for being under the influence of alcohol while on duty.

JOINT STATEMENT OF ISSUE:

Employee A. Simard was dismissed from Corporation service effective 14 January 1982.

The Brotherhood contends that there is not just cause for this severe penalty in that the grievor, on the day in question, had not consumed alcoholic beverages but had taken medication prescribed by a medical doctor.

The Brotherhood requests that the grievor be returned to his former position without loss of seniority or benefits and with payment of lost wages.

The Corporation declined the Brotherhood's request.

FOR THE EMPLOYEE:

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

FOR THE CORPORATION:

(SGD.) A. D. ANDREW
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger	– Labour Relations Officer, Montreal
J. De Cotret	– O.B.S. Officer, Montreal
D. Fenton	– Human Resources Assistant, Montreal
A. L. Soward	– Witness
L. A. Patterson	– Witness

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
I. Quinn	– Representative, Montreal
L. Kiley	– Local Chairman, Montreal
A. Simard	– Grievor

AWARD OF THE ARBITRATOR

The only question to be determined in this case is whether or not the grievor was in fact under the influence of alcohol while on duty.

The Company has advanced the evidence of Mr. LaPierre, a Porter, Mr. Moldovan, a Steward, Mr. Patterson, a Sleeping Car Conductor and Mr. Soward, the Service Supervisor. Each of those persons had some contact with the grievor during the trip on the night of January 3 and the morning of January 4, 1982. Mr. Patterson and Mr. Soward testified at the hearing of this matter.

The Porter's statement, which is not denied, is that at about 5:00 a.m., on January 4, while escorting a passenger who had boarded the train with her child at Trois-Pistoles to her roomette, he discovered the grievor there, asleep. The grievor was dressed in his working clothes and, according to the Porter, appeared "physically unstable and mentally disoriented". It was the grievor's evidence that on the night of the 3rd of January, after serving meals, he had operated the bingo for the passengers, and when that was over, shortly after 12:00, he had eaten a sandwich and, not feeling well, taken a "Tagamet" as well as a 25 mg Librium pill, which had been prescribed. He sat up for a while, and then took a second Librium pill, which was unusual. He then became drowsy and went to lie down. He went into a reserved roomette, thinking he was in crew car. He sat down with his bag between his feet, and dozed off.

The Porter's account of the grievor's behaviour on being awakened is of course consistent with his having consumed alcohol, but it also is quite consistent with the grievor's own account. The Porter's statement would not, of itself, give substantial support to the conclusion that the grievor had been drinking.

Mr. Soward testified that the grievor served him at breakfast on January 4. The grievor was uncoordinated, his speech slurred and his eyes glassy. Mr. Soward states that when the grievor served coffee, he could detect an odour of alcohol. The grievor does not deny these symptoms, but he denies any consumption of alcohol.

Mr. Soward spoke to the Steward, Mr. Moldovan, who agreed that the grievor was unfit, and replaced him with an employee who had been travelling deadhead. Mr. Moldovan stated that he had not taken particular notice of the grievor's condition until the Service Supervisor had brought it to his attention. He described the grievor as flushed, glassy-eyed and unsteady, but did not report any odour of alcohol.

Mr. Patterson was with Mr. Soward when the grievor was taken out of service. He makes a similar statement as to unsteadiness and concludes that the grievor had been drinking.

The grievor had a serious alcohol problem, and had been disciplined for being unfit for duty and for having consumed alcohol while on duty. If, in the instant case, he was in fact under the influence of alcohol, then I would agree that there was just cause for discharge. The question is, however, whether or not there was any cause for discipline in respect of the grievor's conduct on the trip in question. It may well be that the symptoms which were observed – unsteadiness, slurred speech, glassy eyes – were attributed to the consumption of alcohol because of the grievor's known problem. The evidence as to the smell of alcohol is of course more damaging, but it is to be noted that there is only one piece of evidence of that sort, and that the others make no mention of such an observation.

On all of the evidence, although there were of course grounds for suspicion, I think there was not that clear and cogent evidence which would be necessary to support the conclusion that the grievor was under the influence of alcohol. It does appear that he was affected by his medication.

On the material before me, just cause for discharge has not been established, and the grievance is accordingly allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR