

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1030

Heard at Montreal, Tuesday, January 11, 1983

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discharge of Sleeping Car Porter J. Bourdeau for misappropriation of Corporation's funds on train 135 ex. Montreal, March 22, 1982, train 135 ex. Montreal, April 2, 1982 and train 135 ex. Montreal, May 12, 1982.

JOINT STATEMENT OF ISSUE:

CN Police officers (Special Branch) submitted three written reports of observations made while travelling on train number 135 on March 22, April 2 and May 12, 1982.

Among other matters, the officers reported they were provided with sleeping accommodations on the above trips by the grievor and, though the tariff rate for roomette accommodation was sixteen dollars, the Police officers paid ten dollars on each occasion. No cash fare receipts were issued.

Following a hearing, Mr. Bourdeau was discharged effective June 14 for misappropriation of Corporation's funds on train 135 March 22, April 2 and May 12, 1982.

The Brotherhood requested the grievor be reinstated.

The Corporation has rejected the request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
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
A. R. Cave	– Manager, Human Resources, Montreal
J. DeCotret	– O.B.S. Officer, Montreal
D. E. Fenton	– Human Resources Assistant, Montreal
C. O. White	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
I. Quinn	– Representative, Montreal
J. Bourdeau	– Grievor, Montreal
R. Rouleau	– Local Chairman, Montreal
P. Garneau	– Witness

AWARD OF THE ARBITRATOR

The grievor is an employee of some thirty-seven years' service. There is no evidence of any disciplinary record.

It is acknowledged that the grievor did, on the three occasions in question, "misappropriate" the Company's funds in the sense that (as the Union's brief puts it), "he accepted gratuities from an undercover investigator instead of selling him sleeping accommodations".

On each of the three occasions in question the grievor, moved, as he stated, by sympathy for the individuals concerned, permitted them to occupy roomette accommodations. Company regulations permitted the sale of such accommodation at a reduced "overnight" rate, as the grievor, a Porter-in-Charge, was well aware. On the mornings following, the grievor accepted a ten-dollar payment, which he treated in each case as a gratuity, and kept. He issued no receipt, completed no sale-of-accommodation report and remitted no funds. He had no authorization to give out the accommodation on other than the regular tariff basis.

When the matter came to the Company's attention, and when the grievor was notified it was being investigated, he remitted the thirty dollars which he had received to the Company. He appears to have given frank and forthright answers to the questions put to him at the investigation.

Whether or not the grievor thought that he was being generous to the passengers involved, the undeniable fact is that he gave them the use of the Company's facilities, and that he accepted for his own account a payment from them. That he accepted something less than the tariff amount does not alter the fact of his pocketing the revenue from what was a sale, albeit a dubious one.

In **Case No. 611**, it was held that while there had been irregularities in the grievor's handling of sleeping car accommodations, it was not proved that he had in fact sold accommodations and pocketed the proceeds. In the instant case, there is such proof. Numerous cases have held that such conduct – the misappropriation of funds – is ground for discharge. In my view, there was just cause for the action taken by the Company in this case. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR