

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1046

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discharge of Steward-Waiter A. L. Lawrence for misappropriation of Corporation revenues on Train 15, July 24-25, Train 15, July 31 August 1, and Train 15, August 7-8, 1982.

JOINT STATEMENT OF ISSUE:

CN Police Officers (Special Branch) submitted four written reports of observations made while travelling on Train 15 on July 24-25, July 31-August 1, and August 7-8, 1982.

Among other matters, the officers reported the following irregularities:

- Coffee served in re-used styrofoam cups.
- Coffee served in plastic cups and no receipts issued for monies collected.
- Service of "Rapido" breakfast, toast and coffee without the issuance of meal checks for revenue collected.

Following a hearing, Mr. Lawrence was discharged effective October 1 for misappropriation of revenues on the above mentioned dates.

The Brotherhood contended the grievor was innocent and requested reinstatement will full seniority and without loss of earnings.

The Corporation has rejected the request.

FOR THE BROTHERHOOD:

(SGD.). THOMAS MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) ANDRÉ LEGER
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger – Labour Relations Officer, Montreal
A. Gagné – Director, Labour Relations, Montreal
R. Lajoie – Service Supervisor, Halifax

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton
T. McGrath – National Vice-President, Ottawa
G. Thivierge – Regional Vice-President, Montreal
A. Lawrence – Grievor

AWARD OF THE ARBITRATOR

The Employer's evidence in this matter is that, on more than one occasion, the grievor served coffee in re-used styrofoam cups, but charged the passenger as for a separate cup. On other occasions he was observed serving breakfasts and accepting payment therefor without using or requiring the use of the meal car service order form.

In each case, these methods would leave the grievor with cash, arising out of unrecorded and uncontrolled transactions. In the case of the coffee, it is served in certain areas in styrofoam cups, and a charge made. The same cup may be refilled, at no charge to the passenger. The number of cups used is controlled. In the cases of which evidence was presented, investigating officers marked the cups in which coffee was served them. Later, when they ordered coffee again, it was served in the same cups, and a charge was made. In one instance a cup which had been used the previous evening was used the following morning, for service to the same individual. In another instance, an officer was served coffee in a cup which had been used by another passenger and left at the table. It was the grievor who served the coffee and collected payment therefore (and there is no doubt that it was payment of the charge for the coffee, and not a tip which was involved). I accept the *viva voce* evidence of the investigating officers in this regard.

As to the meal service, the evidence is that the grievor served certain breakfast orders and accepted payment therefor without using the meal service order form and without issuing a receipt. There is evidence that he did this in the case of at least one investigating officer, and he was observed to follow a similar procedure with other passengers. The evidence to this effect is clear and was not shaken on cross-examination.

Having regard to the evidence, I find that the grievor did commit the offences alleged. The result would be that he received more cash than he accounted for. This was misappropriation of funds, and was just cause for discharge. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR