

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1068

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Mr. D. Trudeau, Steward-Waiter, discharged for not having submitted trip reports or remittances in excess of \$1,600.00 for trips made December 9, 14, 27, 31, 1981 and January 2, 1982.

JOINT STATEMENT OF ISSUE:

The grievor withheld Corporation funds for trips made on the above mentioned dates.

Following a hearing, Mr. Trudeau was discharged for failure to remit revenues and submit reports for trips made December 9, 14, 27, 31, 1981 and January 2, 1982.

The Brotherhood contends that the Corporation's system of remittance is inadequate, and as a result maintain that the discipline assessed was too severe, and request the grievor be reinstated with full seniority plus payment of loss wages.

The Corporation has rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

(SGD) A. GAGNÉ
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger – Labour Relations Officer, Montreal
D. Fenton – Human Resources Assistant, Montreal
C. O. White – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. Thivierge – Regional Vice-President, Montreal
T. McGrath – National Vice-President, Ottawa
G. Côté – Representative, Montreal
P. Garneau – Local Union Officer, Montreal
D. Trudeau – Grievor

AWARD OF THE ARBITRATOR

The grievor was a Steward-Waiter, of some three years' service with the Company. The Company's rules, quite properly, required him to submit a report and remit the Company's revenue for each trip. While the grievor was aware of this requirement, and while he would appear to have complied with it in most instances, he did not do so in the instances set out in the Joint Statement.

The grievor does not deny that he failed to remit the funds. He had no substantial excuse, except that he had severe personal problems during the period referred to, and that he simply forgot to make the necessary accounting. He did, ultimately, undertake to pay the money over to the Company at a date following the investigation. The inescapable conclusion to be drawn from that is that the grievor had simply retained the Company's money.

The amount involved was substantial, and the grievor's failure to account for it cannot reasonably be taken to have been a mere oversight.

It is true that the Company was lax in its daily procedures for verifying that reports are made and revenues accounted for, and that the matter did not come to light until, in the fullness of time, the accounting department discovered the failure. That is not to say, however, that the Company's sloppiness somehow encouraged the grievor, or led to him to believe that it was proper for him to keep substantial amounts of the Company's funds on hand (indeed, he did not keep them safely, as has been noted), for an indefinite period. It may well be that the Company has not consistently enforced its rule, in that employee may have delayed making remittances for short periods without severe discipline being imposed. The instant case, of course, is much more than that. What the grievor did had in no sense been condoned.

Having regard to all of the circumstances, it is my view that there was just cause for discharge. The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR