

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1120

Heard at Montreal, Tuesday, July 5, 1983

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discharge of C. Gemme, Montreal, for misappropriation of Corporation revenues while assigned as steward-waiter, Train 132, September 21, 1982.

JOINT STATEMENT OF ISSUE:

Two CN Police Officers (Special Branch) submitted written reports of observations made while returning from Jonquiere to Montreal on Train 132, September 21, 1982.

Among other matters, the officers reported observing the grievor serving coffee in marked re-used styrofoam thermo cups.

The grievor claimed that on the date of the infraction he was under the influence of alcohol and did not recall committing the infractions for which he was charged.

Following a hearing, Mr. Gemme was discharged for misappropriation of Corporation funds.

The Brotherhood requested that the grievor be reinstated in the services of VIA.

The Corporation rejected the 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
A. R. Cave	– Manager, Human Resources, Montreal
C. O. White	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
R. Rouleau	– Local Chairman, Montreal
C. Gemme	– Grievor

AWARD OF THE ARBITRATOR

While I am, as in **CROA 1119**, not persuaded that the identification of the cups said to have been re-used by the grievor is established by clear and compelling evidence, the grievor himself has no recollection of the matter, and the Union's argument is that whether or not the grievor behaved improperly, he was under the influence of alcohol and suffered from alcoholism.

While the grievor may not have shown signs of being under the influence, the evidence is persuasive that the grievor was an alcoholic, and had been so for many years. Following his discharge, he has, apparently rigorously, followed a program of treatment, with success. Since he acknowledges the need for such a program, it would appear that he would, had it not been for his discharge, have been accepted in a company-approved rehabilitation program.

Given the reservations already expressed as to the evidence of improper behaviour, and the clear proof of the grievor's alcoholism and of his efforts to control it, it is my conclusion that there was not just cause for discharge, although there was cause for suspension. It is my award that the grievor be reinstated in employment forthwith, without loss of seniority, but without compensation for loss of earnings or other benefits. Reinstatement is conditional on the grievor's undertaking to participate in a Company-approved rehabilitation program.

(signed) J. F. W. WEATHERILL
ARBITRATOR