

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1122

Heard at Montreal, Tuesday, July 5, 1983

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discharge of W. S. Maxwell, Halifax, for misappropriation of Corporation revenues while assigned as steward/waiter, Train 14, July 29, 1982.

JOINT STATEMENT OF ISSUE:

CN Police officers (Special Branch) submitted written reports of observations made while travelling on Train 14, July 29, 1982.

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

A hearing was held and, as a result, Mr. Maxwell was discharged for Misappropriation of Corporation revenues.

The Brotherhood requested the immediate reinstatement of Mr. Maxwell with full seniority and without loss of earnings.

The Corporation rejected the request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(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
J. W. Clyde – Witness

AWARD OF THE ARBITRATOR

In this case, as in **CROA 1119** and **1120**, I am not persuaded that the re-use of styrofoam cups has been established by clear and compelling evidence. Even assuming, however, that the marks made by the police officer plainly identified a re-used cup, the evidence shows that on the car in question someone else may have been responsible for its re-use – although it would then be less likely that it would be re-used for service to the same person.

At the times in question the staff were busy, and the grievor does not deny the possibility that an error may have been made in charging the customer. He does deny having washed out a styrofoam cup for re-use, and having regard to all of the evidence, I accept his testimony.

On the material before me, the offence alleged has not been established, and it is my conclusion that just cause for discharge has not been shown. The grievance is accordingly allowed. It is my award that the grievor be reinstated in employment forthwith, without loss of seniority and with compensation for loss of earnings.

(signed) J. F. W. WEATHERILL
ARBITRATOR