

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1204

Heard at Montreal, Tuesday, March 6, 1984

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discharge of K. Sing, Take Out Attendant, VIA Atlantic.

JOINT STATEMENT OF ISSUE:

On October 11, 1983, Mr. Sing attended a hearing in connection with irregularities in the collecting, reporting and remitting monies while assigned as Take Out Attendant on the following trains and dates:

<u>Train</u>	<u>DATE</u>
606	April 26, 1983
601	July 26, 1983
604	August 5, 1983
604	August 18, 1983

Arising out of the hearing were allegations that the grievor collected sales tax from Police Officers which were not remitted.

As a result of the hearing, Mr. Sing was discharged.

The Brotherhood contends the discharge was based on word of mouth evidence without giving consideration to the grievor's position as Local Chairman, and request reinstatement without loss of seniority and compensation for loss of earnings.

The Corporation maintained the discipline was warranted and rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

(SGD.) A. GAGNE
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger – Manager, Labour Relations, Montreal
C. O. White – Labour Relations Assistant, Montreal
D. J. Matthews – Manager, Human Resources, Moncton

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton
G. Murray – Representative, Moncton
L. Brown – President, Local 333, Halifax
K. Sing – Grievor

AWARD OF THE ARBITRATOR

The grievor, Mr. K. Sing, was discharged for the misappropriation of funds while performing the duties of Take Out Attendant on April 26, July 26, August 5th and August 18, 1983.

Apparently, the grievor while in the course of serving customers on the Halifax to Sydney run would charge customer's sales tax of 10% on the sales of food above \$4.00 but did not record the amount of tax on his sales invoices. On each of the days in question the grievor served CN Police Investigators food in excess of \$4.00. On some of those occasions the price of the food purchased approximated the cost of the items inclusive of sales tax. The appropriate invoices filled out by the grievor did not reflect the sales tax charged to the customer. On other occasions the monies charged the officers were correct.

The grievor denied that he would charge the customer sales tax at all. He claimed that owing to the pressures of his position he would simply calculate an approximate amount for the items sold without including the sales tax. He complained that the Company offered him no assistance by way of cash registers or calculators to determine the exact amount of a sale. The amount the grievor allegedly denied the tax authorities was a nominal amount. The issue before me is whether the grievor intended to misappropriate for his own use monies that should have otherwise have been directed towards the provincial sales tax authorities.

The evidence indicated that Take Out Attendants generally do not charge or record the appropriate sales tax on items sold. The evidence demonstrated that the grievor would often charge inexact and approximate amounts for the goods that were purchased by customers. At times the monies charged were both below and above the required amounts. Indeed, on some occasions the amounts were closer to the monies required for the purchases plus sales tax than the mere purchases themselves. However, those purchases with the sales tax added would only represent a small percentage of the transactions completed by the grievor during the course of a shift. In many instances shown in the affidavits filed by the CN Police, the correct amounts were shown for the purchases that were made.

Although I have serious reservations as to the grievor's intentions I am prepared, based on the material before me, to give him the benefit of the doubt. I am satisfied that the grievor in mentioning the sales tax charged to customers often did so in order to disguise his haphazard method of arriving at an appropriate amount for the purchase of the food items. His long, unblemished record of honesty with the Company, however, belies any conclusive intention to misappropriate for his own use, what appears to be such paltry amounts of money.

Owing to the manner the grievor has discharged his responsibilities of Take Out Attendant, he should be reinstated to the position he held at the time of his discharge, but without compensation or other benefits. Save to that extent, the grievance should succeed.

(signed) DAVID H. KATES
ARBITRATOR