

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1205

Heard at Montreal, Tuesday, March 6, 1984

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Appeal of discipline assessed senior Counter Sales Agent J. T. Little, VIA Atlantic, for failure to follow instructions.

JOINT STATEMENT OF ISSUE:

Mr. Little failed to follow instructions concerning the issuance of VIA tickets on December 16 and 17, 1982, resulting in a net debit of \$133.00.

Following several requests by the Employer to settle the outstanding debit, the grievor sent a letter to the supervisor dated June 9, 1983 wherein he stated that he had no intention to pay the debit.

An investigation was held on June 28, 1983, following which Mr. Little's record was assessed 10 demerit marks for failure to follow instructions pertaining to issuance of VIA Transportation. \$133.00 was deducted from his wages to cover the debit.

The Brotherhood filed a grievance based on the untimeliness of the investigation and alleged that article 24.2 of the agreement was violated. The Brotherhood therefore requests the removal of 10 demerit marks and the reimbursement of \$133.00 which was deducted from the grievor's wages.

The Corporation rejected the request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(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
J. A. Dugas	– District Manager, Marketing, Moncton

And on behalf of the Brotherhood:

G. Murray	– Representative, Moncton
W. C. Vance	– Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

The issue in this case is whether the grievor was properly assessed 10 demerit marks as well as the deduction of \$133.00 from his pay for the error he committed in the sale of a VIA Rail ticket. The Company has held the Trade Union bound to the issues agreed to in the Joint Statement of Issue. In this particular regard, the Trade Union has based its case "on the untimeliness of the investigation and (the) alleged violation of article 24.2 of the Agreement". Article 24.2 reads in part:

Investigations in connection with alleged irregularities will be held as quickly as possible ...

There is no question that the grievor's alleged irregularity took place on December 16, 1982. Because of the grievor's failure to collect the monies for the unpaid ticket owing to the Company from the customer when he was given the opportunity to do so the Company debited him with the outstanding amount. The grievor ignored the notices sent to him for payment of this amount on February 28 and March 8, 1983. These letters were followed subsequently with letters requesting payment on April 29, May 12 and June 3, 1983. On June 9, 1983 the grievor replied indicating he had no intention of making payment. The Company thereupon notified the grievor to appear for an investigation on June 23, 1983. This investigation culminated in the disciplinary penalties that were imposed.

Based on the material before me I am satisfied that the Company made every reasonable effort to persuade the grievor to repay the amount allegedly owing the Company arising out of the grievor's mistake without the imposition of demerit marks. The grievor refused to comply with the Company's request for payment and thereby challenged its authority to make him repay. Quite clearly what the grievor should have done was to pay the amount immediately (or make some alternative arrangement for payment) and to challenge the Company's actions through the grievance procedure. The grievor, in my view, was being insubordinate and therefore should not be allowed to take advantage of that misconduct by alleging breach by the Company of article 24.2 of the collective agreement. The delay in calling an investigation was designed to give the grievor ample opportunity to comply with the Company's request.

Because I am restricted by the contents of the parties' Joint Statement of Issue, I can make no comment on the other matters raised by the Trade Union in its brief.

But for the reasons advanced herein with respect to the issues raised in the Joint Statement of Issue, the grievance must be denied.

(signed) DAVID H. KATES
ARBITRATOR