

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1298

Heard at Montreal, Tuesday, November 13, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Bridgeman D. E. Thibeault for forging CN Form 320-B and fraudulently obtaining a VIA Rail ticket.

JOINT STATEMENT OF ISSUE:

On 5 September 1983 Mr. Thibeault obtained without authority CN Form 320-B from his Foreman's file cabinet. He completed this form, to have a pass furnished to a Dennis Thibeault from Sarnia to Brampton, and forged his Foreman's name as "Head of Department" on the "Approved By" portion of the form. Later that same day, he obtained a rail passage ticket from Sarnia to Brampton from the VIA Rail Ticket Office in Sarnia and presented the completed request for trip pass as payment of the \$21.00 charge.

Mr. Thibeault was subsequently advised by a VIA supervisor that this method of payment was rejected by VIA Accounting on 14 September 1983 and the grievor made restitution of the outstanding amount of \$21.00 to VIA on 20 September 1983.

Following an investigation, Mr. Thibeault was dismissed from Company service effective 20 October 1983 for forging CN Form 320-B and fraudulently obtaining a VIA Rail ticket from Sarnia to Brampton, at Sarnia on 5 September 1983.

The Brotherhood appealed on the basis that the discipline assessed was too severe.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. E. Scheerle – Labour Relations Officer, Montreal
T. D. Ferens – Manager Labour Relations, Montreal
S. Powell – VIA Ticket Agent, Sarnia
J. Dunn – Labour Relations Officer, Toronto

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
R. Y. Gaudreau – Vice-President, Ottawa
L. Boland – Federation General Chairman, London
J. J. Roach – General Chairman, Moncton

AWARD OF THE ARBITRATOR

On the basis of the admitted evidence, the grievor, Mr. D. E. Thibeault, engaged in a deliberate, calculated and intentional act of fraud in misrepresenting (forging) his foreman's signature on CN Form 320-B in order to secure a free VIA pass enabling his wife to travel from Sarnia to Brampton, Ontario, without payment of the appropriate fare.

Although the grievor's admission of his wrongdoing and his decision to make restitution of the fare to VIA demonstrated some recognition on his part of the error he committed, his blatant act of dishonesty still merited the ultimate penalty of discharge.

This Arbitrator confesses (in the Trade Union's terms) to adhering to "the narrow and antiquated view that theft, once proven, dismissal must follow". I do not say, however, that no circumstance would dissuade me of a different view. I am simply satisfied, for present purposes, that no such circumstance has been established in the grievor's case to cause me to alter the discharge penalty. The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR