

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1539

Heard at Montreal, Wednesday, July 9, 1986

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The assessment of ten demerit marks to Mr. S. MacNeill which resulted in his dismissal on account of accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Following an investigation held on November 1, 1985, Mr. S. MacNeill, Counter Sales Agent, was assessed ten demerit marks for failure to protect his assignment on October 23 and 24, 1985.

The grievor was subsequently discharged for the accumulation of sixty-five demerit marks.

The Brotherhood appealed the discipline, requesting that the ten demerit marks be removed from the grievor's record and that he be reinstated and reimbursed for any loss of wages and benefits.

The Corporation rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) RICK BECKWITH
FOR: NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. GAGNE
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. O. White – Labour Relations Officer, Montreal
D. J. Matthews – Manager, Human Resources, Moncton
R. E. Belliveau – Assistant Supervisor, Employee Service Centre, Moncton

And on behalf of the Brotherhood:

R. J. Stevens – Representative, Toronto
T. N. Stol – Regional Vice-President, Toronto
G. Coté – Observer
S. MacNeill – Grievor

AWARD OF THE ARBITRATOR

The grievor was assessed ten demerit marks for his failure to protect his work assignment on October 23 and October 24, 1985. To be perfectly clear the grievor "booked off" his scheduled shift for October 23, 1985 and was late by 1-1/2 hours in reporting for work on October 24, 1985. On each occasion the grievor reported his difficulty to the Senior Counter Sales Agent, Mr. C. Rivers.

There is no dispute that the Company endured a financial hardship and other inconveniences by virtue of the grievor's absences.

The grievor indicated that his van had broken down while enroute to work. He made no effort to secure alternative bus and rail transportation because he had to care for his dog. It was later discovered that the grievor was living out of his van as he was in the process of seeking more permanent living accommodation after settling down in Stratford, Ontario. Accordingly, the grievor felt he could not abandon both his belongings and his dog to attend work by other means.

The Company does not dispute that the grievor's van broke down. However, they challenge the sincerity of his excuse by virtue of the grievor's failure to have exhibited greater candor in reporting his difficulties to Mr. Rivers at the time leave was requested and of his omission to make a sincere attempt to overcome these difficulties.

Although I might agree with the Company that its approval of leave in the circumstances described was tainted by the grievor's lack of candor (particularly with respect to his dog) I cannot find that the grievor was without a legitimate excuse for absenting himself. His misconduct was his securing leave without being more forthcoming. But, had he been more forthcoming he still may very well have been granted leave. Or, if not, he may not have been discharged.

Although I find that the grievor engaged in misconduct I am not prepared, despite his somewhat abysmal record during his seven years of service, to sustain the discharge.

I have decided to give the grievor the benefit of the doubt. He is to be reinstated forthwith without pay or other benefits. The period between his discharge and his reinstatement is to be treated as a suspension without pay. In all other respects the 10 demerit marks assessed the grievor is to be removed from his record.

I shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR