

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1557

Heard at Montreal, Tuesday, September 9, 1986

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discharge of Dining Car Steward J. J. Gallant.

JOINT STATEMENT OF ISSUE:

Following an investigation on July 8, 1985, Mr. Gallant's record was assessed 40 demerit marks for:
a) Possession and consumption of alcoholic beverage while on duty on Train No. 1, on May 27, 1985. b) Being disrespectful, using offensive and obscene language in the presence of guests on Train No. 1, on May 27, 1985.
c) Reporting late for duty at Winnipeg for Train No. 2, on May 28, 1985.

When added to 25 previous demerit marks on the grievor's record, Mr. Gallant was discharged account accumulation of 65 demerit mark

The Brotherhood appealed the discipline maintaining that no proof was produced to indicate that the grievor had consumed alcoholic beverage while on duty.

The Corporation rejected the Brotherhood's appeal.

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:

M. St-Jules	– Manager, Labour Relations, Montreal
C. O. White	– Officer, Labour Relations, Montreal
C.A.B. Henery	– Human Resources Officer, Toronto
J. Kish	– Officer, Personnel & Labour Relations, Montreal
M. Martel	– Witness
A. Shuster	– Witness

And on behalf of the Brotherhood:

T. N. Stol	– Regional Vice-President, Toronto
J. J. Huggins	– Local Chairperson, Toronto

AWARD OF THE ARBITRATOR

This is the arbitration of a grievance brought forward on behalf of a deceased employee. The employee in question Dining Car Steward J. J. Gallant was discharged from employment with the Corporation following the assessment of 40 demerit marks for the alleged consumption of alcohol while on duty on May 27, 1985, disrespectful and obscene language in the presence of patrons on the same date, and lastly reporting late for duty on May 28, 1985.

The material establishes that some five employees reported to management that they observed Mr. Gallant in an intoxicated state during his working hours on May 27, 1985. His duties as dining car steward for Train No. 1 between Toronto and Winnipeg included the general supervision of services in the dining car. On that day a number of waiters under his jurisdiction observed Mr. Gallant pouring liquid from a bottle in the pantry refrigerator into a cup and drinking it. On one occasion he requested Waiter M. Martel to serve him a bottle of beer, which the Waiter did. Later, he requested Waiter A. Shuster to pour him a drink from his private bottle in the pantry refrigerator. She did so, and reported that it was a 375 ml. bottle of whiskey. Although both waiters were present at the hearing, the Union did not seek leave to cross examine them on the content of their written statements.

The Union submits that the late grievor was denied a fair and impartial hearing by the Corporation pursuant to article 24.5 of the collective agreement. The thrust of its argument is that at the hearing held by the Corporation at Toronto, July 8, 1985, the employees who laid the charges against Mr. Gallant were not in attendance, and that only portions of their written statements were disclosed to him. It appears, however, that the Union had every entitlement to discover the entirety of the evidence against the grievor at that stage. Article 24.8 the collective agreement stipulates that such evidence is to be made available to the Regional Vice-President of the Brotherhood "if he so desires". In the absence of any such request by the Union in the instant case, the Arbitrator cannot sustain its objection that fairness was denied the grievor. While it is true that the grievor's passing has made it extremely difficult from a practical standpoint, for the Union to cross examine the employees in attendance at this hearing, that is not a circumstance of the Corporation's making. It does not, therefore, curtail Management's rights under the collective agreement.

The Corporation came to the hearing with witnesses whose evidence would establish that the grievor consumed liquor while on duty, was intoxicated on duty, and was disrespectful to passengers, some of whom complained about his conduct. It is not, moreover, disputed that he was late reporting to work in Winnipeg on May 28, 1985, thereby requiring the Corporation to replace him with another employee on the return train to Toronto.

Arbitral precedent is strong as it applies to the disciplinary treatment of employees who consume alcoholic beverages while on duty, particularly to the point of intoxication. This is especially so in a service industry in which employees are seen as responsible for the comfort, well-being and safety of the public. The Arbitrator is satisfied that the conduct of Mr. Gallant was such as to risk serious damage to the Corporation's reputation in the eyes of its patrons. In view of the late employee's prior extensive disciplinary record the Arbitrator can see no basis upon which to disturb the imposition of 40 demerit marks by the Corporation. The grievance must therefore be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR