

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1579

Heard at Montreal, Tuesday, November 11, 1986

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discipline assessed, unavailability for work during calling hours.

JOINT STATEMENT OF ISSUE:

The grievor, Mr. R. Bolduc, operated from the spare board, and returned from a trip on December 28, 1984.

In accordance with article 7.11 of collective agreement no. 2, he was entitled to book rest, and he did not. Subsequently, he was placed on the spare board as per article 7.9.

The grievor was called for work on December 29, and was unavailable. As a result, his record was assessed 5 demerit marks.

The Brotherhood has appealed the discipline.

The Corporation has denied the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. GAGNÉ
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Corporation:

M. St. Jules	– Manager Labour Relations, Montreal
C. O. White	– Labour Relations Officer, Montreal
J. Legault	– Supervisor, Sales & Services, (O.B.S.) VIA Quebec, Montreal
J. Letellier	– Human Resources Officer, Montreal

And on behalf of the Brotherhood:

G. Coté	– Regional Vice-President, Montreal
K. Cameron	– Local Chairperson, Montreal
R. Bolduc	– Grievor

AWARD OF THE ARBITRATOR

The evidence establishes that when the grievor returned from the trip on December 28, 1984 he was advised by the Crew Clerk that no blank forms for booking rest periods were available, and that in any event, because of the heavy Christmas season traffic, rest periods were not being accorded by the Corporation. The Arbitrator accepts that the representation communicated to Mr. Bolduc was unauthorized, being entirely the expression of a bargaining unit employee. The legitimacy of what was communicated to the grievor, however, is not here material.

I accept his testimony, given under oath at the arbitration hearing, that he was given to understand by the Clerk both that no forms were available and that in any event the ability to book off had been suspended. I accept his evidence as an explanation for his failure to provide written notification that he was booking off and filling out the form normally required for that purpose.

While the Arbitrator had initial concerns as to why this explanation was not conveyed earlier to the Corporation, it appears that this was a consequence of the grievance procedure. Mr. Bolduc was not involved in direct meetings with Management, as the minor nature of the imposition of 5 demerit marks does not invoke a formal investigation procedure. Subsequent contact with the Corporation was at the regional and national level through his Union, which only became fully aware of the facts considerably later. Upon careful scrutiny, I am satisfied that this is not a case of self-serving evidence manufactured after the fact.

For the foregoing reasons the grievance must be allowed. The 5 demerit marks imposed upon the grievor shall be removed from his record forthwith.

(signed) MICHEL G. PICHER
ARBITRATOR