

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1834

Heard at Montreal, Wednesday, 12 October 1988

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

The assessment of 30 demerit marks to the record of Mr. R. Albert for consumption of alcohol while subject to duty, and his subsequent dismissal for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Following a hearing, the Corporation assessed 30 demerit marks to the record of Mr. Albert for consuming alcohol while he was subject to duty. Mr. Albert was then forthwith dismissed for accumulation of demerit marks in excess of sixty.

The Brotherhood contends that the charge was not substantiated by the contents of the hearing, that Mr. Albert was not subject to duty at the particular time in question, and that there is no evidence that Mr. Albert was intoxicated when he commenced work on October 9, 1987. The Brotherhood also posits that the use, by the Corporation, of private investigators for entrapment is an unfair practice and considers the grievor as being unjustly dealt with. Finally, the Brotherhood contends that since the Corporation refused to submit the investigator's statement to the grievor and the Local Chairman as part of the hearing, and since parts of the statement were used in questioning Mr. Albert, the hearing was not fair.

Consequently, the Brotherhood seeks the removal of the 30 demerit marks from Mr. Albert's file and his reinstatement with compensation for lost wages and benefits as well as full seniority.

The Corporation denies that the grievor was treated unfairly or unjustly and that the Corporation complied fully with Articles 24.8, 24.9 and 24.17 of Agreement No. 2. The Corporation maintains its position that the discipline assessed was warranted and has declined to reinstate the grievor.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

(SGD.) A. D. ANDREW
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. O. White	– Labour Relations Officer, Montreal
C. Pollock	– Labour Relations Officer, Montreal
J. R. Kish	– Personnel & Labour Relations Officer Customer Services, Montreal
G. Lalonde	– Observer

And on behalf of the Brotherhood:

T. N. Stol	– Regional Vice-President, Toronto
R. Albert	– Grievor

AWARD OF THE ARBITRATOR

In the instant matter the burden of proof is upon the Corporation. The grievor appeared at the hearing and testified under oath respecting the circumstances of the incident in which he is alleged to have consumed a can of beer while subject to duty. He denies having done so, explaining that he was sitting at a table which had been used by two passengers shortly beforehand, one of whom left behind an empty can of beer.

No contrary evidence of a direct nature was adduced by the Corporation. While its decision to terminate the grievor's services was based entirely upon a report of a private investigator, that individual was not present to give evidence or to be cross-examined under oath. In these circumstances the Arbitrator has no alternative but to find that the evidence adduced at the hearing supports the position of the Brotherhood, and that the Corporation has failed to prove, on the balance of probabilities, that Mr. Albert consumed alcohol while subject to duty following the conclusion of his shift on October 8, 1987.

For these reasons the grievance must be allowed. The grievor shall be reinstated with full compensation for wages and benefits lost, and without loss of seniority. The demerits assessed shall be expunged from the grievor's record. I retain jurisdiction in the event of any dispute between the parties with regard to the interpretation or implementation of this award.

OCTOBER 14, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR