

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1889

Heard at Montreal, Thursday, February 16, 1989

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Dismissal of Mr. F. P. Bisson, Stock Checker, for having accumulated too many penalty points.

JOINT STATEMENT OF ISSUE:

Following an investigation held October 29, 1987, the Corporation took the following disciplinary action against Mr. F. Bisson, an employee of the Employee Service Centre (ESC), in Montreal.

- 15 penalty points for unauthorized absence for the workplace;
- 30 penalty points for having consumed intoxicants during hours compensated by the Corporation;
- 30 penalty points for having appropriated the Corporation's assets and for falsifying records.

Mr. Bisson was later dismissed for having accumulated too many penalty points.

The Brotherhood alleges that the Corporation closed its eyes on employee behaviour and that it did not attempt to correct practices and traditions inside the Employee Service Centre. Moreover, the Brotherhood alleges that the accusations are unfounded and that the disciplinary action is unwarranted. It requests that Mr. Bisson be reinstated in his position with full compensation of benefits.

The Corporation rejects the Brotherhood's allegations and has declined the grievance at every step of the grievance procedure.

FOR THE BROTHERHOOD

(SGD) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY

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

There appeared on behalf of the Company:

- M. St-Jules – Manager, Labour Relations, Montreal
- C. Laroche – Manager, Human Resources, VIA Quebec
- M. Audette – Project Manager, Customer Services, Montreal
- M. Dubois – Manager, Employee Service Centre, Montreal
- J. Kish – Officer, Labour Relations, Montreal
- N. Lenoir – General Manager, Customer Services, Montreal
- Y. Colameo – Witness

And on behalf of the Brotherhood:

- R. Moreau – Regional Vice-President, Montreal
- G. Cote – Representative, Montreal

R. Chevalier – Chairperson, Montreal
J. J. Journault – Witness
R. Gangon – Witness
F. Bisson – Grievor

AWARD OF THE ARBITRATOR

Upon reviewing the facts, the Arbitrator cannot conclude, according to the balance of evidence, that Mr. Bisson knowingly misappropriated the Corporation's property and falsified the stock records. According to the evidence, in his capacity as an issuer of goods in the Employee Service Centre, Mr. Bisson received verbal instructions from the checkers to "fix" documentation relating to certain items under his care. The Arbitrator accepts the evidence of the Brotherhood to the effect that it is not uncommon for an employee to give verbal instruction to the issuer so that he may complete the documentation relating to a requisition for items needed to supply a train on very short notice. In this sense, to "fix" stock means only to catch up on documentation.

It is not disputed that Mr. Bisson had consumed intoxicants during the hours compensated by the Corporation. The Arbitrator accepts the employer's evidence that Mr. Bisson consumed alcoholic beverages at the Peel Pub during his supper hour on September 10, 1987. There is therefore no need to resolve the conflict concerning the Corporation's allegation that Mr. Bisson had also consumed cannabis twice on the job and during his supper hour. In the Arbitrator's opinion, the 30 penalty points applied to Mr. Bisson's file are justified by the fact that he consumed alcoholic beverages during his paid meal hour.

The Arbitrator also accepts the evidence of the investigator, who states that the grievor was absent from work for an unauthorized period of 30 minutes with another employee, on September 8, 1987. For this incident, the application of 15 penalty points is justified.

In summary, the evidence substantiates conduct calling for a total of 45 demerit points, rather than 75. As a result, the dismissal of Mr. Bisson, whose previous record was marred by no other disciplinary action, was unwarranted. The grievor shall be therefore be reinstated in his duties and shall be compensated for his loss of salary and benefits, without loss of seniority. His disciplinary record shall be adjusted through the substitution of a total of 45 penalty points. The Arbitrator shall keep the dispute under referral.

January 17, 1989

**MICHEL G. PICHER
ARBITRATOR**