

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1890

Heard at Montreal, Thursday, 16 February 1989

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

The assessment of 75 demerit marks to the record of Mr. G. Brunet, Stock Checker, employed at the Employee Services Centre, Montreal, and his subsequent dismissal for accumulation of demerit marks in excess of 60.

JOINT STATEMENT OF ISSUE:

Following an investigation held on October 26, 1987, the grievor's record was assessed 30 demerit marks for consumption of intoxicants on Company property, and during working hours; 30 demerit marks for the misappropriation of Company supplies, and 15 demerit marks for unauthorized absence from the workplace.

The Brotherhood appealed the discipline on the basis that: **a)** the grievor was assessed discipline 14 days prior to the investigation which led to his discharge; **b)** on occasion, the grievor left the premises prior to the completion of his shift after having obtained permission from his supervisor; **c)** no assistance was offered the grievor after he admitted to having a drug related problem; **d)** employees were permitted to remove Company supplies and later replace them; **e)** the investigator did not act in good faith;

f) discipline was excessive. The Brotherhood seeks the reinstatement of Mr. Brunet without loss of seniority and with full wages and benefits.

The Corporation denies the Brotherhood's contentions and has declined the grievance at all steps of the grievance procedure.

FOR THE BROTHERHOOD:

(SGD) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

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

There appeared on behalf of the Corporation:

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

And on behalf of the Brotherhood:

R. Moreau	– Regional Vice-President, Montreal
G. Coté	– Representative, Montreal
R. Chevalier	– Education Chairperson, Montreal
J. J. Journault	– Witness
R. Gagnon	– Witness
G. Brunet	– Grievor

AWARD OF THE ARBITRATOR

According to the evidence, Mr. Brunet had a drug problem, including a dependance on cocaine. He has admitted taking narcotics at work, as well as alcohol during a paid supper hour. For these infractions the Corporation assessed him 30 demerit marks, which the Arbitrator considers justified. The Arbitrator is also satisfied that Mr. Brunet rendered himself liable to disciplinary action for his unauthorized absences from work on July 12 and August 4, 1987. The validity of the imposition of 15 demerits for such an infraction is also established.

Mr. Brunet was employed in the Employee Services Centre, a part of Montreal's Central Station from which trains receive supplies. The grievor denies having misappropriated goods belonging to the Corporation. In light of the evidence, the Arbitrator is forced to conclude that on July 10, 12 and 16, 1987, Mr. Brunet did appropriate a total of two soft drinks and one can of beer. I cannot accept Mr. Brunet's claim that he intended to replace these items later at his own expense. Nonetheless, dismissing Mr. Brunet for these infractions seems rather draconian to the Arbitrator, given his prior good service and the fact that his disciplinary record was clear at the time of the investigation. It remains doubtful, however, that the incident of August 4th would have occurred if the Corporation had investigated and disciplined the grievor immediately after the incident of July 12, as provided by Article 24.2 of the Collective Agreement (*see CROA 1833*).

Mr. Brunet states that he is no longer dependent on drugs. In the circumstances, the Arbitrator deems it equitable that Mr. Brunet be given the benefit of a last chance to prove himself recovered and able to pursue his career in the Corporation's employ, even if it means certain strict and extraordinary conditions to protect the legitimate interests of the employer. For these reasons, the Arbitrator orders that Mr. Brunet be reinstated into his employment, without compensation for loss of 45 demerits on his record. His return to work is, however, ordered on the condition that he agree, by means of a signed commitment, to take part in a drug rehabilitation program for at least two years after his reinstatement. The rehabilitation program will be selected by the Corporation in consultation with the Brotherhood, and an officer of the program will be required to report to the Corporation in writing every three months, to verify Mr. Brunet's participation in its activities. In addition, the grievor shall agree, also in writing, to allow the Corporation to carry out random drug tests on his person, including urine and blood tests, at reasonable and non-excessive intervals, in order to verify that he is not under the influence of drugs at work, for a minimum of three years from the date of his return to work. If the grievor is unable to satisfy these conditions, or if it is established that he is at work under the influence of drugs, he will be liable to the severest of discipline.

The Arbitrator remains seized of this dispute to resolve any misunderstanding which may occur concerning the implementation of this decision.

February 17, 1989

(sgd) MICHEL G. PICHER
ARBITRATOR