

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1898

Heard at Montreal, Wednesday, 15 March 1989

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

The assessment of 15 demerit marks to the record of Mr. A.L. March, and subsequent discharge for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On February 26, 1988, Mr. March, a spare board employee, worked from Toronto to Montreal on Train 68. On arrival, he requested to return deadhead on Train 61 the following morning rather than on Train 59 that night.

On February 27, 1988, Mr. March reported to the On Board Services Office, and was informed by the supervisor on duty that due to an increase in passenger carrying and extra cars being added he was required to return in service. The grievor refused. He was asked to reconsider his decision, and again he refused. An employee based in Montreal was subsequently assigned to the run the grievor refused.

Following a hearing into the matter on March 4, 1988, the grievor's record was assessed 15 demerit marks, and subsequent discharge for accumulation of demerit marks.

The Brotherhood contends that the grievor had received specific instructions from his immediate supervisor in Toronto to work on Train 68, and return deadhead. The Brotherhood further contends that Mr. March was already penalized when he returned deadhead without pay in accordance with Article 7.6(b), therefore the assessment of discipline is considered a "double penalty". The Brotherhood requests that the grievor should be reinstated with all wages and benefits.

The Corporation maintains that its right to require the grievor to work is vested in Article 7.6(a) of the Collective Agreement, and has declined the Brotherhood's request.

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:

C. O. White	– Officer, Labour Relations, Montreal
M. St-Jules	– Manager, Labour Relations, Montreal
J. R. Kish	– Officer, Labour Relations, Montreal
A. Henery	– Officer, Human Resources, VIA Ontario
C. F. Gordon	– Supervisor On Train, VIA Quebec
F. Falk	– Supervisor, Customer Services, VIA Ontario

And on behalf of the Brotherhood:

T. N. Stol – Regional Vice-President, Toronto
A. L. March – Grievor

AWARD OF THE ARBITRATOR

The material establishes beyond controversy that on February 26, 1988 the grievor arrived in Montreal on Train 68 and that an arrangement was made by which he would return to Toronto deadhead on Train 61 the following morning. Despite the description of the events appearing in the joint statement of issue, at the hearing the Brotherhood asserted, with the support of the grievor's evidence, that in fact he was instructed by Montreal management that he was to deadhead on Train 61 the following morning. The Corporation, on the other hand, insists that this was arranged at the grievor's request. In the Arbitrator's view the resolution of that issue is not material to the outcome of the grievance, as it is common ground that, for whatever reason, both the Corporation and the grievor expected that Mr. March would be deadheading back to Toronto on Train 61 on the morning of February 27, 1988.

The grievor's evidence at the hearing is that, because of a late night of socializing, he was not in a fit condition to work back to Toronto on Train 61, when requested to do so on extremely short notice. The Arbitrator accepts that that was the reason for his refusal of the assignment, and that his refusal was, to that extent, justified. The representative of the Corporation fairly points out that Mr. March did not make his motive clearly known to the On Board Services supervisor in Montreal when he declined the assignment. However, during the course of the subsequent disciplinary investigation, prior to the imposition of discipline, Mr. March related to the investigating officer that he had had some drinks the evening prior, had socialized and returned to bed quite late at night. He explained to the Company that for this reason he did not feel able to work to an acceptable standard when he was unexpectedly asked to work at the last minute on the morning of the 27th.

The grievor was not disciplined for reporting to duty under the influence of alcohol or for drinking while subject to duty, nor is it clear on the evidence before the Arbitrator that he could have been. Putting the case at its highest, it appears that because he was not in a fit condition to work, because of insufficient sleep, the grievor declined the assignment. It is common ground that because he declined to work he was not paid for deadheading, and no complaint is made in that regard.

On the whole of the evidence the Arbitrator is not satisfied that the Corporation has discharged the burden which it bears of establishing, on the balance of probabilities, that the Corporation had just cause for the imposition of discipline against the grievor for wrongfully refusing his assignment. For these reasons the grievance must be allowed. The grievor shall be reinstated forthwith, with compensation for all wages and benefits lost, and without loss of seniority. I retain jurisdiction in the event of any dispute with respect to the interpretation or implementation of this award.

March 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR