

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2014

Heard at Montreal, Tuesday, 10 April 1990

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The assessment of thirty demerit marks to the records of 14 employees and the dismissal of a 15th employee at the Montreal Maintenance Centre for defrauding VIA Rail.

JOINT STATEMENT OF ISSUE:

Following investigations, it was established that certain employees in the Montreal Maintenance Centre had purchased safety boots from a co-worker and submitted, for refund by the Corporation, invoices that did not reflect the sums paid for the boots. Consequently, thirty demerit marks were assessed to the record of each of the employees.

As well, Mr. Y. Béland was dismissed for having encouraged employees to defraud VIA Rail by issuing illegal and falsified invoices, and for defrauding VIA Rail by claiming refunds based on illegal and falsified invoices.

Thirty demerit marks were assessed to the records of 14 other employees, resulting in the dismissal of Messrs. J. Bernier and C. Allard for accumulation of demerit marks.

The Brotherhood appealed the discharge of Mr. Béland and the assessment of thirty demerit marks, and maintains that the members of the CBRT&GW were treated harshly compared to members of another bargaining unit who were assessed fifteen demerit marks for a similar offense.

The Corporation rejected the Brotherhood's appeal and maintains that an act of fraud was committed, and that the discipline imposed was appropriate given the circumstances.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) P. J. THIVIERGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock – Senior Officer, Labour Relations, Montreal
C. O. White – Senior Officer, Labour Relations, Montreal

And on behalf of the Brotherhood:

R. Moreau – Regional Vice-President, Montreal
J. H. Brown – Representative, Montreal

AWARD OF THE ARBITRATOR

In light of the testimony of several of the grievors, as well as that of another employee who did not file a grievance, the Arbitrator must conclude, from the preponderance of the evidence, that the fourteen employees who lodged grievances knowingly falsified invoices submitted to the Corporation. By doing so they received excessive and unjustified refunds under the employer's policy concerning reimbursement for the purchase of safety shoes. It was, therefore, a question of embezzling Corporation funds, the amounts of which varied according to the claims made by each individual. In most cases the fraud amounted to a sum of from ten to fifteen dollars and, at most, twenty-seven dollars.

Whereas the Corporation imposed a disciplinary penalty of thirty demerits on fourteen of the grievors, this led to the discharge of two of them, Messrs. J. Bernier and C. Allard. Furthermore, Mr. Y. Béland, who was the instigator of the plot, was dismissed.

In the Arbitrator's view, there is one attenuating circumstance which must be taken into consideration in the case of the fourteen employees, with the exception of Mr. Béland. It is agreed that Mr. Béland also sold shoes to other employees outside the bargaining unit. It appears from the evidence that one of these employees, a member of another union, was also disciplined for having similarly submitted false claims for reimbursement. His case involved a claim made for the purchase of shoes which were not safety shoes and were for personal use. This employee, however, received fifteen demerits. It appears to the Arbitrator that the offense of that employee is as serious as that of the fourteen grievors in the instant case. In his case, as in theirs, it was a question of an employee who sought to obtain from the Corporation a reimbursement to which he was not entitled, and who did so in a conscious and premeditated fashion. It seems to me indisputable that fairness demands that all of the employees be treated in the same manner concerning the appropriate measure of discipline.

For these reasons, the Arbitrator orders that the thirty demerits assessed each of the fourteen grievors be reduced to fifteen.

Consequently, Messrs. J. Bernier and C. Allard are to be reinstated into their employment without loss of seniority and with compensation for loss of salary and benefits. It is to be hoped that the same reduction in penalty will be accorded to all of the disciplined employees who did not file a grievance.

The Arbitrator can see no reason which would justify a reduction in the discipline assessed Mr. Y. Béland and his grievance must therefore be dismissed.

April 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR