

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2210

Heard at Montreal, Thursday, 14 November 1991

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The quantum of discipline assessed to Mr. J. Rampersad for misappropriation of VIA Rail material and supplies.

JOINT STATEMENT OF ISSUE:

On December 10, 1990, the grievor and his wife were apprehended while attempting to leave Winnipeg Station with Company property concealed in a box.

Following an investigation held on December 19, 1990, Mr. Rampersad was discharged for misappropriation of VIA Rail material and supplies.

The Brotherhood contends that the discipline is excessive. The Brotherhood argues that the misappropriated goods were virtually worthless and that a person who would jeopardize his career for [those] items was not acting rationally. The Brotherhood argues that Mr. Rampersad has admitted to being an alcoholic and has made an honest effort at recovery. The Brotherhood contends that he is a long term employee with 15 years of service.

The Corporation has rejected the grievance at all steps of the Grievance Procedure. The Corporation believes that the discipline assessed was appropriate in the circumstances. The Corporation contends that the grievor was sober when he was caught, he enlisted a confederate in an attempt to avoid being apprehended, that he lied at his investigation and finally that he admitted his wrongdoing only after he was discharged.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Fisher – Senior Officer, Labour Relations, Montreal
C. Pollock – Senior Officer, Labour Relations, Montreal
G. Peck – Manager, Customer Services, VIA West, Winnipeg

And on behalf of the Brotherhood:

D. Olszewski – Regional Vice-President, Winnipeg

AWARD OF THE ARBITRATOR

On a review of the material filed the Arbitrator is satisfied that, although the grievor did engage in an act of petty theft as alleged, his misconduct occurred during a period when his judgement and actions were substantially influenced by his condition as an alcoholic. This is underscored by the fact that the goods which the grievor

misappropriated went missing on the same day that the Assistant Manager, Customer Services formed the belief that Mr. Rampersad was under the influence of alcohol while at work.

The material before the Arbitrator includes documented evidence, from an EAP counsellor, from a rehabilitation counsellor of the Alcoholism Foundation of Manitoba, from Alcoholics Anonymous and from the grievor's own family physician, all of which confirm that he has undergone substantial in-patient and out-patient care, has pursued the follow-up program of Alcoholics Anonymous faithfully, and has remained alcohol free for a substantial number of months. In the Arbitrator's view, these facts, taken together with the grievor's long service to the Corporation, are mitigating factors to be taken into account in assessing the appropriateness of the penalty in the circumstances of this case. While, as a general rule, pilfering company property will merit the most serious of disciplinary consequences, the general principle that the bond of trust essential to the employment relationship has been destroyed is less compelling where, as in the instant case, the evidence discloses that the act of dishonesty was in substantial part prompted by a serious medical condition which has since been brought under control through the substantial rehabilitative efforts of the employee concerned. There is, moreover, remedial scope to protect the legitimate interests of the Corporation through the fashioning of a conditional reinstatement.

For the foregoing reasons the Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without loss of seniority. Mr. Rampersad's reinstatement is conditional upon his providing to the Corporation quarterly reports, for a period of not less than two years, from an officer of Alcoholics Anonymous, or a similar support group, to confirm to the Corporation his continued participation in a follow-up program, as well as his ongoing sobriety. The failure of the grievor to comply with the foregoing conditions shall be grounds for the termination of his reinstatement.

November 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR