

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2246

Heard at Montreal, Thursday, 12 March 1992

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS DISPUTE:

The assessment of 15 demerit marks to the personal record of Mr. P. Gagné.
[translation]

JOINT STATEMENT OF ISSUE:

An investigation was held on August 28, 1990 to determine the facts surrounding Mr. Gagné's allegedly being under the influence of drugs during his tour of duty on August 23, 1990. As a result of this investigation, the Corporation assessed 15 demerit marks to the record of Mr. Gagné for being unfit for duty while employed as a Crew Dispatcher on August 23, 1990.

The Brotherhood believes that the discipline is excessive in that Mr. Gagné performed his duties without errors in judgement according to the responsibility of his position on that date. The Brotherhood seeks to have the 15 demerit marks removed from his file.

The Corporation believes that the discipline assessed was warranted and not excessive. The Corporation has declined the grievance at all steps of the grievance procedure. [translation]

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) T. N. STOL

(SGD.) C. C. MUGGERIDGE

NATIONAL VICE-PRESIDENT

DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. S. Fisher

Senior Officer, Labour Relations, Montreal

M. St-Jules

Senior Negotiator & Advisor, Labour Relations, Montreal C.
Pollock

Senior Officer, Labour Relations, Montreal

J. Kish

Senior Advisor, Customer Services, Montreal

C. Plante

Witness

P. Gagné

Witness

And on behalf of the Brotherhood:

J. Brown

Representative, Montreal

F. Bison

Local Chairperson, Montreal

P. Gagné

Grievor

AWARD OF THE ARBITRATOR

Having regard to the evidence of the witnesses heard, the Arbitrator cannot conclude that the Corporation has established, on the balance of probabilities, that the grievor was under the influence of drugs while at work on August 23, 1990 or that he appeared at work in a state physically unfit to work. The evidence discloses that Mr. Gagné worked for some seven hours, apparently without any significant failure in the quality of his work performance, before being confronted by his supervisors. He denies being under the influence of drugs, and explained that he had red eyes and was somewhat tired because he worked late the previous evening doing renovations in his home. In the circumstances, Mr. Gagné declined the Corporation's request that he submit to a drug test. He was not disciplined for that refusal. There is, moreover, no suggestion before the Arbitrator that he works in a safety sensitive position. The Corporation bears the burden of proof to establish, on the balance of probabilities, that the grievor was in a physical state of unfitness for work on August 23, 1990. For the reasons related, I cannot find that that burden has been discharged. The grievance must therefore be allowed.

The fifteen demerits assessed against the grievor's record shall be removed forthwith.

March 13, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR