

CANADIAN RAILWAY OFFICE OF ARBITRATION
SUPPLEMENTARY AWARD TO
CASE NO. 2363

Heard in Montreal, Wednesday, 13 December 1995

concerning

VIA RAIL CANADA INC.

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA [CAW-CANADA]**

There appeared on behalf of the Corporation:

D. Fisher	– Senior Advisor and Negotiator, Montreal
C. Pollock	– Senior Labour Relations Officer, Montreal
D. Dewolfe	– Section Director, Customer Services

And on behalf of the Union:

T. Barron	– Representative, Moncton
J. Mills	– Grievor

AWARD OF THE ARBITRATOR

The award herein, dated July 16, 1993, provided for the reinstatement of the grievor into active employment, subject to certain conditions, as follows:

The Arbitrator directs that Mr. Mills be reinstated into his employment, without compensation and without loss of seniority, with his assignments to be restricted to the position of chef. His reinstatement is conditional upon his undertaking, for a period of not less than two years, the duties and responsibilities of a chef in On-Board Services, on a trial basis. If, for any quarterly period during the course of the two years, Mr. Mills should fail to register attendance comparable to the average of other employees in his classification in VIA Atlantic, the Corporation shall be entitled to consider his reinstatement into that trial service as at an end. Should that occur the parties will be in a position to consider and exercise such rights and obligations as may then apply to Mr. Mills under the terms of the collective agreement. The Arbitrator retains jurisdiction.

The evidence establishes that in fact the grievor did not meet the standard of attendance for other chefs in any of the first four quarters following his return to work.

The Arbitrator agrees with the Union that the language of the award should not be construed as to provide for the grievor's automatic termination from employment by the failure of a condition. It is important to recognize that in fact what the parties were disputing was whether the grievor was fit to return to active service, and not a discharge. That is why the award provides that in the event of the failure of the conditions both the Corporation and the grievor are to have the exercise of their rights and obligations under the terms of the collective agreement. In other words, should the Corporation determine that the grievor should be terminated, it must nevertheless do so for just cause. In fact, however, the Corporation takes the position that it did have just cause to terminate the grievor's employment, based solely on a failure of the conditions. In the Arbitrator's view that position is not without some foundation. It is unnecessary, however, to resolve the issue for the purposes of this award, as the greater issue of the Corporation's right to terminate the grievor for innocent absenteeism is fully dealt with in the grievance filed by the Union protesting Mr. Mills' termination. In light of the disposition of that grievance (**CROA 2663**) it is unnecessary to make any further comment on this matter.

December 15, 1995

(signed) MICHEL G. PICHER
ARBITRATOR