

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2379

Heard at Montreal, Tuesday, 13 July 1993

concerning

**VIA RAIL CANADA INC.**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

The assessment of ten demerit marks to Mr. M.F. Smith for failure to properly protect his assignment form December 10 to 22, 1990, inclusive.

### **JOINT STATEMENT OF ISSUE**

Mr. M.F. Smith was assigned as an Assistant Conductor home terminalled Toronto.

As an operating employee, he is required to be in possession of a current rules qualifications card.

He was scheduled to attend rules instructions August 27-29, 1990; was rescheduled to attend October 31 - November 2, and then rescheduled again for November 16-18, 1990.

He did not attend any of these classes.

Effective December 10, 1990, as his rules card had expired, he was not qualified to operate trains.

He subsequently attended rules classes at London, Ontario, December 18-20 and reported for duty December 22.

On January 3, 1991, he attended an investigation into this matter and was subsequently assessed ten demerit marks.

It is the Union's position that the discipline is too severe, if not unwarranted.

It is the Corporation's position that the discipline is justified.

**FOR THE UNION:**

**FOR THE CORPORATION:**

**(SGD.) M. P. GREGOTSKI**  
GENERAL CHAIRMAN

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

There appeared on behalf of the Corporation:

D. A. Watson - Senior Labour Relations Officer, Montreal  
K. W. Taylor - Senior Negotiator & Advisor, Labour Relations, Montreal

There appeared on behalf of the Union:

G. Binsfeld - Secretary/Treasurer, GCA, Fort Erie  
M. P. Gregotski - General Chairperson, Fort Erie  
M. F. Smith - Grievor

### **AWARD OF THE ARBITRATOR**

It is clear on the evidence before the Arbitrator that Mr. Smith did not take all reasonable steps to attend rules instructions, as he was required to do to remain qualified as a conductor or trainperson. Of particular concern to the Arbitrator is his position that he was unable to attend the instruction course given at MacMillan Yard between November 16 and 18, 1990. Part of his justification for not attending that session is that it was difficult for him to reach MacMillan Yard before 0800 hours by public transit on Sunday, November 18, 1990. The Arbitrator finds this excuse to be cause for concern as to what it suggests of the grievor's commitment to his employer, as well as to his own job security. By his own admission Mr. Smith could have reached the Sunday session of the course by taxi. Also, had he attended the first two days he might have arranged for a ride on the Sunday with another employee. On the whole, I can see no reasonable basis for his failure to have completed the rules instruction by November 18, 1990.

The Arbitrator shares the Corporation's concern with the apparent lack of initiative shown by Mr. Smith. However, I have some difficulty accepting the employer's position with respect to the assessment of discipline. The understanding in the railway industry is that an employee is responsible for completing his or her rules qualifications, and rules requalifications, from time to time. According to long-standing practice, should an employee's qualifications in the CROR lapse, the normal outcome is that the employee is withdrawn from service until such time as he or she requalifies in the rules. (*See, e.g., CROA 2176*) Arguably, it might be open to the Corporation to establish a rule to the effect that employees must requalify in the CROR in a timely manner, failing which they are subject to discipline. However, it does not appear that any such rule has been formulated or promulgated to the attention of the employees. Absent such steps, it is difficult for an arbitrator to sustain discipline for being unavailable, particularly where the practice in the industry, and within the Corporation, has been to the contrary (*see KVP Co. Ltd., (1965), 16 L.A.C. 73 (Robinson)*).

For the foregoing reasons the Arbitrator cannot sustain the assessment of ten demerits against the grievor for failing to protect his assignment. The fact that Mr. Smith was held out of service until such time as he did complete his rules instruction was, as noted above, in keeping with the normal consequences for failing to maintain qualifications current. The grievor's disciplinary record shall therefore be adjusted to reflect the assessment of forty-five demerits. He should not, however, be compensated for the time out of service.

July 16, 1993

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**