

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2380

Heard at Montreal, Tuesday, 13 July 1993

concerning

**VIA RAIL CANADA INC.**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

The assessment of ten demerit marks and subsequent discharge for accumulation of demerit marks, to Mr. M.F. Smith for his responsibility in the derailment of a passenger coach at Niagara Falls, Ontario, on December 26, 1991.

### **JOINT STATEMENT OF ISSUE**

On December 26, 1991, Mr. M.F. Smith was the conductor on train 646 operating between Toronto and Niagara Falls. At Mileage 31.5 on the Stamford Subdivision, he engaged a power switch which resulted in a passenger coach being derailed.

On January 17, 20 and 21, 1992, he attended an investigation into this matter and was subsequently assessed ten demerit marks for his "failure to comply with the requirements of CROR 104.2(c, resulting in derailment of VIA 3374, Train 646 mileage 31.35, Stamford Subdivision."

Effective February 3, 1992, Mr. Smith was discharged for accumulating in excess of 60 demerit marks.

The Union appealed the assessment of discipline and contends that it was not, in all the circumstances, appropriate to discharge Mr. Smith or to treat this incident as a culminating incident.

It is the Corporation's position that the discipline was appropriate and in view of Mr. Smith's discipline record, the violation must be considered as the culminating incident.

**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**

Mr. Smith was responsible, due to his own error, for the derailment of a passenger coach at Niagara Falls on December 26, 1991. I am satisfied that in the circumstances the assessment of ten demerits was appropriate. While the employer saw fit to couple that discipline with discharge, in light of the grievor's prior record, I am satisfied that that outcome is excessive. While I accept that Mr. Smith's record is extensive, and that his failure to respond to prior disciplinary sanctions is such as to cause the Corporation concern, there are reasons to believe that a lengthy suspension, coupled with the assessment of demerits, would be an appropriate sanction in the circumstances. I am equally satisfied, however, that this is not a case for the payment of compensation, in light of the grievor's prior record and the fact that he was the author of his own misfortune.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation, with his disciplinary record to stand at fifty-five demerits.

July 16, 1993

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