

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2417

Heard in Montreal, Thursday, 11 November 1993

concerning

**VIA RAIL CANADA INC.**

and

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

### **DISPUTE:**

The dismissal of J. J. Phelan

### **JOINT STATEMENT OF ISSUE:**

Mr. Phelan, an On-Train Services Employee, was charged with "alleged reporting unfit for duty and under the influence of alcohol or intoxicants at Winnipeg, February 7, 1993."

An investigation was held on February 19, 1993, following which Mr. Phelan was assessed thirty (30) demerit marks. He was discharged from the Corporation for accumulation of demerit marks.

The Brotherhood's position is that discharge is excessive and that Mr. Phelan should be reinstated with full compensation.

The Corporation believes that the discipline assessed as fair and not excessive in the circumstances.

### **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:

C. Pollock – Senior Officer, Labour Relations, Montreal

And on behalf of the Brotherhood:

P. Askin – Representative, Vancouver

J. J. Phelan – Grievor

## **AWARD OF THE ARBITRATOR**

The evidence before the Arbitrator, including well documented medical and professional opinion, confirms that since the grievor's discharge he has pursued an intensive and successful course of rehabilitation from his alcoholism. His efforts included the completion of an in-patient program at the Pacifica Treatment Centre in Vancouver, with follow-up counselling at the Robson Street Clinic in the same city, and subsequent participation in the activities of Alcoholics Anonymous. Mr. Phelan has remained alcohol free for some eight months, and the prognosis for his continued rehabilitation is extremely positive.

The Corporation's representative argues that, in accordance with its policy, Mr. Phelan would be considered for reinstatement only after one year of rehabilitation. While the Arbitrator appreciates the reasons for that policy as a general rule, each case must nevertheless be considered on its individual merits. Moreover, the difference between eight months of sobriety and twelve months, having particular regard to the quality of the supporting evidence presented in Mr. Phelan's case, is not substantial. In addition, Mr. Phelan is an employee of twenty-four years' service, who is four years from his entitlement to retirement with a full pension. He is, by the agreement of the Corporation's representative, a model employee whose service was unexceptionable, but for the difficulties related to his alcoholism. In the circumstances the Arbitrator is satisfied that this is an appropriate case for the reinstatement of the grievor, on conditions.

The Arbitrator directs that Mr. Phelan be reinstated into his employment, without compensation or benefits, and without loss of seniority. Mr. Phelan's reinstatement is conditioned on his remaining free from alcohol consumption and continued participation in the activities of Alcoholics Anonymous. In that regard he shall provide the Corporation, for a period of not less than two years from the date of his reinstatement, quarterly written reports from an officer of that organization, or any other similar organization with which he might become involved, confirming his ongoing abstinence from alcohol and participation in the organization's program, and shall, for the same period, be subject to such breathalyzer, urine or blood tests as may be requested, non-abusively, by the Corporation.

12 November 1993

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