

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2457

Heard in Montreal, Tuesday, 8 March 1994

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The assessment of ten (10) demerit marks on two (2) occasions, to the record of Mr. D. Podolsky, resulting in his discharge for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Following an investigation on July 27, 1992, the grievor was assessed ten (10) demerit marks for "Reporting late for duty as a Service Attendant on Train No. 1 in Toronto on July 17, 1993."

The grievor was also assessed ten (10) demerit marks for being unavailable for duty while operating as a Service Attendant on Train No. 1 enroute to Winnipeg July 17, 1993 to July 18, 1993, resulting in his discharge for accumulation of demerit marks, totalling 75.

The Brotherhood contends that the discipline is unwarranted and unjust.

The Corporation denied the grievance and maintains that the discipline was justified, under the circumstances.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
GENERAL CHAIRMAN

FOR THE CORPORATION:

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

There appeared on behalf of the Company:

- C. Pollock – Senior Labour Relations Officer, Montreal
- D. Fisher – Senior Negotiator & Advisor, Montreal

And on behalf of the Brotherhood:

- K. Naylor – Representative, Winnipeg
- D. Podolsky – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator reflects the assessment of twenty demerit marks for incidents occurring on July 17 and 18, 1993. The first involved the grievor arriving late for work and the second concerns his withdrawing himself from service to rest for a period of time in his roomette.

The facts concerning the grievor's late arrival to work on July 17, 1993 are not disputed. In respect of Mr. Podolsky being in his roomette during the course of his on-duty time, on July 18, 1993, there is certain mitigating evidence to be considered. The unchallenged representation of the Brotherhood is that Mr. Podolsky suffers a degree of recurring pain in one of his feet, as a result of the insert of a metallic pin, following an injury. The record reflects that in February of 1993 Section Director D. Wolk advised Mr. Podolsky that he could rest his foot periodically, so long as doing so did not interfere with his work. The evidence in the case at hand reflects that when he was observed on July 18, 1993 Mr. Podolsky was seated in his roomette, with the door open, and his foot in an elevated position. There is no evidence of any complaint from passengers as to his action, and it appears that he had previously advised them of his location if they should need him. It would also appear, however, that while he was taking the break Mr. Podolsky's shirt was partially unbuttoned, and that he had made no attempt to inform the service manager that he was resting or tending to his foot in furtherance of his understanding with Mr. Wolk. In the circumstances, while the mitigating factor of his prior directive from Mr. Wolk may have some weight, the Arbitrator is compelled to conclude that Mr. Podolsky did withdraw himself from service without properly informing the service manager, in a manner which was deserving of some discipline.

The grievor has been employed by the Corporation for some fifteen years. The evidence before the Arbitrator is extensive, both as regards his prior disciplinary record, which is not impressive, and a history of personal problems, including drug and alcohol addiction, which contributed to that record. It is apparent from the material before me that the grievor has had a history of emotional and physical problems, including problems in respect of marital and family matters, which caused him considerable stress. It is common ground that his drug and alcohol addiction have been under control since 1991, as evidenced by medical documentation provided to the Arbitrator. The grievor continues to play an active, if not leading, role in the affairs of Alcoholics Anonymous in Manitoba, and has made substantial rehabilitative strides in his personal life.

It is true, as the Corporation's representative notes, that the events of July 1993 post-date Mr. Podolsky's recovery from his addictions. However, the medical documentation before me confirms that, in July of 1993, he was suffering ongoing severe emotional problems, which included sleep disorders and depression. In the circumstances the Arbitrator is persuaded by the documentary medical evidence presented, and is satisfied that, while the grievor's conduct was plainly deserving of discipline, his medical condition, for which he was receiving ongoing care, was a contributor to the events which led to his discharge. It is equally clear, however, that his medical condition was not made known to the Corporation.

In the circumstances, I am satisfied that this is an appropriate case for a substitution of penalty. The Arbitrator directs that Mr. Podolsky be reinstated into his employment, without compensation or benefits, and without loss of seniority. His record shall stand at fifty-five demerits. Further, Mr. Podolsky's reinstatement is conditioned upon his providing to the Corporation proof of his ongoing involvement in Alcoholics Anonymous, in the form of written reports from a responsible officer of that organization, to be provided on a quarterly basis, for two years following the grievor's reinstatement.

11 March 1994

(sgd) MICHEL G. PICHER
ARBITRATOR