

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2467

Heard in Montreal, Tuesday, 12 April 1994

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The dismissal of Mr. M. Davidson.

JOINT STATEMENT OF ISSUE:

Following an investigation, the grievor was assessed with sixty (60) demerit marks for consuming alcohol while on duty May 28, 1993, resulting in his discharge.

The Brotherhood contends that after having closely examined the transcripts of the hearing and the explanation of the grievor, they cannot detect any wrongdoing, therefore, the grievor was unjustly dismissed.

The Corporation declined the grievance and maintains that the grievor had previously been warned that his employment situation was precarious, and that any future occurrences of consuming intoxicants or being under the influence of alcohol, while at work, would result in his dismissal.

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:

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| C. Pollock | – Senior Officer, Labour Relations, Montreal |
| D. S. Fisher | – Senior Negotiator & Advisor, Labour Relations, Montreal |
| D. Gobin | – Instructor, Customer Services, Montreal |
| D. Billington | – Manager, On-Train Services, Montreal |

And on behalf of the Brotherhood:

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| K. Naylor | – Representative, Winnipeg |
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AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that Mr. Davidson did consume a quantity of wine while on duty, in the preparation of meals during a training assignment on May 28, 1993. While the grievor advanced the excuse that he was tasting the wine that was to be used in cooking, to ensure that it was not bad, the Arbitrator is satisfied that his consumption was more extensive, and was not limited to that purpose.

The evidence discloses that the grievor had previously been disciplined, on one occasion, for arriving at work under the influence of alcohol. It appears that he had consumed alcohol at a surprise birthday party prior to coming to work, and that in the circumstances the Corporation assessed thirty demerits against his record. The seriousness of consuming alcohol while on duty is not disputed before the Arbitrator. In On-Board Service, which involves service to the public, the Corporation has a right to expect that employees will abstain from the consumption of alcohol and

will not engage in behaviour generally associated with being under the influence of alcohol, while at work. As the treatment of the grievor in respect of the initial alcohol related incident reveals, however, alcohol related offences do not necessarily result in automatic dismissal. It is trite to say that each case must depend on its particular merits, having regard to all of the circumstances.

In the case at hand there are mitigating circumstances to be considered. Firstly, the grievor is an employee of some fourteen years who, but for the prior alcohol related incident of 1991, had a virtually unblemished disciplinary record. The length and quality of his service as an employee is not disputed before me. Most significantly, the Brotherhood has adduced in evidence medical documentation establishing that Mr. Davidson was under psychiatric care for a condition of depression in March and April of 1993, immediately prior to the incident resulting in his discharge. Dr. Sean McHugh, the physician who treated Mr. Davidson, states in a letter dated April 7, 1994, in part, the following:

The above contacted me to ask if I would provide some details regarding his medical treatment in 1993.

He was seen on 29 March 1993 in consultation and twice in follow-up in the next month. He was referred because of increasing symptoms of depression. over a month period. While off work since November 1992 because of back strain his depressed mood had clearly preceded this. His thoughts were focused around the issues of his employment. He stated that he felt abused by VIA Rail by a number of relocations with short notice resulting in separation from his family and social supports. He reported that he felt somewhat hopeless in that he expected to be transferred back to Winnipeg where he had previously lived but had had to sell his house because of the move to Toronto. At this point he was quite determined to return to Vancouver and that admitted this could jeopardize his employment.

My impression is that he was significantly depressed related to situational factors and aggravated by increased alcohol consumption secondary to his perceived stress. When seen last in follow-up, on 16 April 1993, he had returned to work on light duties, was feeling less depressed and was doing other positive things such as attending Alcoholics Anonymous meetings.

As indicated by the Brotherhood's representative, the grievor is not an alcoholic. She relates that following his attendance at some Alcoholics Anonymous meetings, he came to realize that depression was at the root of his problem, and therefore discontinued his involvement in the Alcoholics Anonymous program.

In the Arbitrator's view the mitigating factors presented are compelling. Firstly, the grievor is a long-service employee with a record which, apart from two incidents, can be described as exemplary. Medical documentation establishes that prior to the incident in question he was under psychiatric care for a diagnosed condition of depression which, by his psychiatrist's own description, promoted excessive drinking. On the whole, while the evidence does not excuse the grievor's conduct, it does provide some explanation in mitigation, which can be considered in the exercise of the Arbitrator's discretion to consider a lesser penalty.

In view of the fact that the content of the psychiatrist's letter was not made known to the Corporation prior to the arbitration hearing, I do not deem this to be an appropriate case for an order of compensation. I am satisfied, however, that this is an appropriate case for the reinstatement of the employee, subject to conditions that will protect the Corporation's interests.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, forthwith, without compensation for wages or benefits lost, and without loss of seniority. The grievor's reinstatement shall be conditioned upon Mr. Davidson providing medical evidence to confirm that he is fit to return to work, and in particular that his prior condition of depression is sufficiently resolved or under control so as to allow his return to productive service. Further, following reinstatement, Mr. Davidson shall provide to the Corporation medical reports, to be rendered on a quarterly basis, for a period of not less than two years, confirming his fitness to work in respect to his prior condition of depression, or any other medical condition which could impact his employability.

15 April 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR