

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2567

Heard in Montreal, Thursday, 15 December 1994

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Disciplinary sanction assessed Mr. Pierre Harvey, 30 demerit marks, which resulted in his discharge for accumulation of more of 60 demerit marks.

UNION'S STATEMENT OF ISSUE:

During the two investigations relative to the same subject, Mr. P. Harvey was questioned concerning the fact he had not been available for the work between November 4 and 7, 1993, while assigned to the trainmen's spareboard at Quebec.

The Union grieves the decision of the Corporation given the fact that he had not missed a call to service during these three days making the discipline too severe.

The Union alleges that the Corporation has violated the provisions of paragraphs 75.2(b)(3) and 75.2(c)(3), article 75 of the agreement no. 12.

The Union requests therefore that Mr. Harvey be returned to work with full compensation for wages and benefits loss and without loss of seniority.

The Corporation rejects the request of the Union.

FOR THE UNION:

(SGD.) R. LEBEL
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

J. Ouellet	– Senior Labour Relations Officer, Montreal
D. A. Watson	– Senior Labour Relations Officer, Montreal
K. Taylor	– Senior Advisor and Negotiator, Labour Relations, Montreal
L. Lévis	– Manager, Safety, Montreal
J-P Maheux	– Customer Service, Montreal

And on behalf of the Union:

M. Poulin	– Counsel, Quebec
R. LeBel	– General Chairman, Quebec
V. Martin	– Local Chairman, Quebec
P. Harvey	– Grievor

AWARD OF THE ARBITRATOR

The evidence establishes that the grievor did miss to a call to the service, at least on November 6, 1993. Given his disciplinary file, he was therefore susceptible to a disciplinary penalty which would entail his dismissal by reason the accumulation of more of 60 demerit marks. I not accept the position of the Union concerning the Corporation's alleged violation of the provisions of the collective agreement concerning the notice given to the employee and the procedure followed in the investigation. It was clear, such as it appeared in the notice of February 21, that it was a case of investigating the "... matter of not being available for work between November 4 and 7, 1993 ...". I cannot therefore conclude that Mr. Harvey lost any rights because of the procedure followed, even if there had been a certain amount of uncertainty on the part of the employer concerning articles of the collective agreement that applied.

There are, however, mitigating factors to be examined with regard to the discretion of the arbitrator concerning the disciplinary penalty. Mr. Harvey has been an employee in the service of VIA and CN Rail for fifteen years. It seems evident that his prior disciplinary file, which contains a number of infractions for unavailability, developed in large part from his alcoholism, a medical condition which was recognized and treated since his discharge. The documentation establishes that the grievor followed the treatments for his alcoholism since March 1994, after a period of detoxification in a hospital. Since that time, until the present, he has participated in a programme of psychological treatments on a regular basis. In the circumstances, the Arbitrator judges that the interests of the employer can be served equitably by an order of conditional reinstatement..

The grievance is therefore allowed, in part. The Arbitrator orders that Mr. Harvey be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost, with his discipline standing at 50 demerits. However, his reinstatement is ordered only if Mr. Harvey agrees to the following conditions for a period of two years following his reinstatement:

1. He must abstain from consuming any alcoholic beverages.
2. He must follow the psychological treatments with Mr. Desrochers, or with another psychologist acceptable to the employer, on a regular basis, for the two year period, and furnish to the Company a written note from the psychologist every three months to confirm his assiduous participation in the program.
3. For the two year period, Mr. Harvey must maintain an attendance and availability record at least equal to the average of other employees in his classification. If his availability is not equal to the average of his colleagues in any six month period in the two years, he will be liable to discharge.

December 16, 1994

(signed) MICHEL G. PICHER
ARBITRATOR