

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2658

Heard in Montreal, Tuesday, 10 October 1995

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

The assessment of 10 demerit marks to Assistant Conductor P.W. Danné for failure to protect his assignment on Train 81, January 13, 1993.

UNION'S STATEMENT OF ISSUE:

On January 13, 1993, Mr. Danné was scheduled to work his regular assignment as Assistant Conductor on Train 81. He failed to appear and did not notify the Corporation that he would be unable to work his assignment.

The grievor acknowledged his error in judgment and committed to improve his punctuality.

As a consequence, he attended a disciplinary investigation on February 5, 1993, following which he was assessed 10 demerit marks.

The Union further contends that the discipline was excessive and requests it be reduced to a written reprimand.

The Corporation disagrees with the Union's contention and has declined its request.

FOR THE UNION:

(SGD.) G. F. BINSFELD

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

K. Taylor	– Senior Advisor & Negotiator, Labour Relations, Montreal
J. Ouellet	– Senior Labour Relations Officer, Montreal
M. Tessier	– Witness

And on behalf of the Union:

G. F. Binsfeld	– Secretary/Treasurer, GCA, Fort Erie
G. Bird	– Vice-General Chairperson, Montreal
P. Danné	– Grievor

AWARD OF THE ARBITRATOR

The material establishes, beyond controversy, that Assistant Conductor Danné did fail to protect his assignment on Train 81 on January 13, 1993. Very simply, on a stormy winter morning he did not take sufficient precaution to board an earlier bus from Hamilton to Toronto, and missed the train for which he was called.

In normal circumstances the fact that the grievor's delay was caused, in part, by a snow storm could be considered in mitigation of the demerits assessed against him. In the instant case, however, that is problematic. Firstly, it is not disputed that the grievor was cautioned by the employer a very short time prior to the incident in question. A letter registered on the grievor's file, dated December 22, 1992, notes that he was late for work on that date, and also that he failed to book back on when returning from vacation. Unfortunately, therefore, the incident of January 13, 1993 comes freshly on the heels of warnings issued to Mr. Danné in respect of his timekeeping. Additionally, as the record discloses, he admits that he was aware of the forecast of bad weather for the morning of January 13. In the circumstances, the Arbitrator can see little basis to reduce the penalty, and substitute a warning or reprimand. In the circumstances, the ten demerits given to the grievor were within the appropriate range of discipline.

For these reasons the grievance must be dismissed.

October 13, 1995

(signed) MICHEL G. PICHER
ARBITRATOR