

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 2692**

Heard in Montreal, Tuesday, 9 January 1996

concerning

**VIA RAIL CANADA INC.**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)**

**DISPUTE:**

Discipline assessed Mr. André Roy.

**JOINT STATEMENT OF ISSUE:**

Following an investigation held December 12, 1994, the grievor was dismissed for: "having modified passenger documents and issuing a ticket giving free travel in VIA 1 on December 3, 1994".

The Union requests the reinstatement of the grievor invoking his length of service; in its opinion, for abusing his pass privileges, the Corporation ought to have temporarily revoked this privilege.

The Corporation rejected the Union's request. It maintains that the discharge of the employee was justified because of the fraud committed by him.

**FOR THE UNION:**

**(SGD.) A. S. WEPRUK**  
**NATIONAL REPRESENTATIVE**

**FOR THE CORPORATION**

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

There appeared on behalf of the Corporation:

C. Pollock – Labour Relations Officer, Montreal  
J. Gough – Customer Services, Montreal

And on behalf of the Union:

R. Massé – Local Chairman, Montreal  
R. Morin – Grievance Chairman, Montreal  
A. Roy – Grievor

### **AWARD OF THE ARBITRATOR**

It is not disputed that Mr. Roy violated the Corporation's rules when he issued a first class ticket for himself for a round trip between Montreal and Toronto as his pass allowed him only "coach" travel. This then is a matter of a misappropriation of funds of approximately \$80.00. Given the obligation of honesty which attaches to the position of sales agent, and in light of the grievor's discipline file, which reveals other irregularities concerning ticketing, the discharge would, *prima facie*, appear justified.

However, there are important mitigating factors which must be taken into consideration as they concern the appropriate disciplinary penalty. Firstly, it must be noted that the prior incidents concerning ticketing which earned the grievor discipline were relatively minor, and were not seen by the Employer as being serious enough to involve his discharge. Secondly, the evidence filed before the Arbitrator reveals that the dishonest act of Mr. Roy was made on the day of his return to work after an absence on one week, following his participation in the accident on Train 66, which caught on fire at Brighton, Ontario on November 20, 1994. A passenger on the train in question, Mr. Roy, who assisted the passengers, suffered trauma for which he received psychiatric treatment. The certificate of his psychiatrist, Dr. R. Tirol, relates that he suffered post-traumatic stress syndrome caused by the accident of November 20, 1994, which accident occurred prior to the incident of November 28, 1994 in which the issuing of the irregular tickets took place.

In the circumstances, and given the grievor's fifteen years of service, the Arbitrator considers that the judgement of Mr. Roy, and his actions at the end of November 1994, ought to be judged in light of the events which he experienced and his mental and emotional state at the time. The Arbitrator considers that the evidence of the grievor, supported in part by the certificate of his doctor, reveals a particular circumstance which justifies a certain compassion. For these reasons, the Arbitrator deems it appropriate to reduce the discipline imposed, allowing the reinstatement of Mr. Roy, under certain conditions.

The grievance is therefore allowed, in part. The Arbitrator orders that Mr. Roy be reinstated into his employment as a sales agent, without loss of seniority, and without compensation for loss of wages and benefits. However, the return to work of the grievor is conditioned upon his obtaining from his psychiatrist, Dr. Tirol, or another qualified practitioner, a certificate to the effect that he is under treatment for his post-traumatic stress syndrome, and that he is fit to return to work. Furthermore, the Corporation has the right to receive reports from his attending physician, at least every three months, confirming his treatment, for a period of one year, or for a shorter period if the treatment is of a shorter duration.

January 12, 1996

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