

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3122

Heard in Montreal, Thursday, 15 June 2000

concerning

**VIA RAIL CANADA INC.**

and

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

**EX PARTE**

### **DISPUTE:**

The dismissal of Ms. Tamra Dickson for misappropriation of company funds.

### **UNION'S STATEMENT OF ISSUE:**

From December 24, 1997 through September 7, 1999 Ms. Dickson was on sick leave. When she returned to work on September 7, 1999 she was retrained and subsequently resumed her former position of Ticket Sales Agent. On October 1, 1999 she was formally investigated for misappropriation of company funds during September and October 1997.

The grievor accepts full responsibility for the funds that went missing during that time period. She admits that, while she cannot recall specific incidents during the aforementioned time period, she did misappropriate company funds in order to support her cocaine addiction. She accepts full responsibility for the missing funds and offered to make restitution at the hearing held October 1, 1999.

It is the Union's position that the grievor was honest, contrite and admitted suffering from an addiction. The Union argues that the grievor should have been allowed to resume her position after having showed she was in recovery and drug free. The Corporation had a duty to accommodate her illness pursuant to the Canadian Human Rights Act; and any misappropriation of funds must be mitigated by the grievor's illness. The Union seeks reinstatement of employment with no loss of wages since October 7, 1999.

### **CORPORATION'S STATEMENT OF ISSUE:**

Ms. Dickson was a Counter Sales Agent in Toronto. The December 1997 sales reports showed a discrepancy in manual tickers issued to Ms. Dickson.

Ms. Dickson went on sick leave from December 24, 1997 until September 7, 1999.

An investigation determined Ms. Dickson misappropriated company funds in the amount of \$8,297.16 and her employment was terminated.

The Union acknowledges the theft but claims mitigating factors necessitating a lesser penalty than dismissal. The Corporation has declined the grievance.

**FOR THE UNION:**

**(SGD.) D. OLSHEWSKI**  
NATIONAL REPRESENTATIVE

**FOR THE CORPORATION:**

**(SGD.) E. J. HOULIHAN**  
FOR: DIRECTOR, HUMAN RESOURCES  
& LABOUR RELATIONS

There appeared on behalf of the Corporation:

- L. Laplante – Senior Officer, Labour Relations, Montreal
- E. J. Houlihan – Senior Manager, Labour Relations, Montreal
- N. Morello – Counsel, Montreal

And on behalf of the Union:

- D. Olszewski – National Representative, Winnipeg
- R. Bir – Bargaining Representative, Toronto
- A. Blanchard – Local Chairperson, Toronto
- T. Dickson – Grievor

### **AWARD OF THE ARBITRATOR**

The record before the Arbitrator establishes that the grievor admittedly stole from the Corporation, misappropriating funds from the sale of manual tickets, in an amount in excess of \$8,000. It is also common ground that from 1992 until her rehabilitation and return to work after a leave of absence of nearly two years, on September 7, 1999, she was afflicted by a severe cocaine addiction.

Having returned to work following her rehabilitation Ms. Dickson was interviewed with respect to recorded discrepancies in her manual ticket sales. Although she disclaimed any precise recollection of individual tickets, she admitted, without reservation, to having misappropriated the funds related to them, and explained that her actions occurred during a time when she was desperate for funds and was being pursued both by her bank and by drug dealers for monetary payments.

The Corporation takes the position that the grievor has not established a causal link between her drug addiction and her admitted acts of theft, so as to merit mitigation of the penalty of discharge, or presumably to justify any accommodation of her condition by the employer. In addition, the Corporation stresses that the grievor was not in fact forthcoming when she returned to work after her extensive leave of absence for drug rehabilitation. It notes that it was only upon the Corporation initiating the formal investigation into the lost funds that the grievor admitted her responsibility for them. It maintains that the evidence adduced by the Union does not establish, through adequate expert testimony, a causal link between the grievor's addictive condition and the admitted theft.

While the Arbitrator can appreciate the perception and concerns of the Corporation, the objective evidence before me suggests that this is a case for both compassion and accommodation of the grievor's condition. Firstly, I am satisfied, based on the grievor's own testimony and a certificate of her physician, that her acts of theft, which are close to irrational on their face as they would obviously not go undetected eventually, were prompted by her disability, namely her drug addiction. Her doctor's certificate confirms her own testimony that her cocaine addiction drove her conduct and, as he states it: "Due to the nature of the illness she was not always in control of her actions." I am satisfied, on the balance of probabilities, that the grievor's theft of funds from the Corporation was causally related to her cocaine addiction. In the circumstances I am satisfied that Ms. Dickson, a 20 year employee, is entitled to reasonable accommodation by the Corporation, in keeping with the requirements of the **Canadian Human Rights Act**, and that her reinstatement into employment with the Corporation can be made subject the conditions that will protect the Corporation's interest, and avoid undue hardship.

The grievance is therefore allowed, in part. The Arbitrator agrees with the Corporation that the failure of the grievor to admit to the theft after her recovery and prior to the employer's own investigation is an aggravating factor which would not justify an order for compensation in the case at hand. Subject to that comment, however, the Arbitrator is satisfied that the grievor should be reinstated on appropriate conditions. The grievor shall therefore be reinstated into her employment forthwith, to be placed into a position which does not involve the unsupervised handling of funds should the Corporation so desire, without loss of seniority and subject to random, unannounced drug testing, to be conducted in a non-abusive manner, for a period of not more than two years. As a condition of continued employment the grievor must agree to remain free of the use of any illicit drugs or narcotics. Should she fail to honour that undertaking she shall be subject to immediate dismissal, with access to arbitration only to determine whether in fact she did violated the conditions of her reinstatement. Her reinstatement shall also be conditional upon Ms. Dickson agreeing to a reasonable schedule of payments to reimburse the Corporation the full amount of the moneys misappropriated. She shall return to work without loss of seniority.

June 16, 2000

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