

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3344

Heard in Montreal, Wednesday, 11 June 2003

concerning

VIA RAIL CANADA INC.

and

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

EX PARTE

DISPUTE:

Concerning discipline assessed to Ms. Jodie Cavanagh.

UNION'S STATEMENT OF ISSUE:

On August 9, 2002, the grievor was assessed 45 demerits "in connection with travel on promotional certificate #023154 issued July 24, 2002." In connection with the same issue, she was also "disqualified from the position of Control Clerk for a period of 2 years of cumulative compensated service" and, "restricted from working any position of trust and responsibility such as that of Senior Counter Sales Agent or an In Charge position."

It is the Union's position that the grievor was innocent of the charges against her and that the investigative statements reveal that she was not responsible for the procurement of the promotional certificate in question. Rather, it was her supervisor, Mr. Jeff Labelle, who procured the promotional certificate without her knowledge.

The Union also argues that the discipline was heavy-handed and amounted to a triple jeopardy. The grievor was initially held out of service for three days pending investigation, resulting in loss of wages tantamount to a suspension. Second, she was assessed forty-five demerits. Third, she was demoted from her position and restricted from working Senior and In Charge positions for a period of three years.

The Union is asking that the discipline assessed Ms. Cavanagh be expunged from her record and that she be compensated for all wages and benefits lost.

CORPORATION'S STATEMENT OF ISSUE:

On August 9, 2002, Ms. Cavanagh was investigated in connection with her travel on a promotional certificate issued July 22, 2002. Following the investigation, she was assessed with 45 demerits and disqualified from the position she held as Control Clerk, as well as any other position of trust, for a period of 2 years.

It is the Union's position that the grievor was innocent of the charges against her and that the investigative statement reveals that she was not responsible for the procurement of the promotional certificate in question. Rather, it was her supervisor, Jeff Labelle, who procured the promotional certificate without her knowledge.

The Union also argues that the discipline was heavy-handed and amounted to a triple jeopardy. The grievor was initially held out of service for three days pending investigation, resulting in loss of wages tantamount to a suspension. Secondly, she was assessed forty-five demerits. Thirdly, she was demoted from her position and restricted from working Senior and In-Charge positions for a period of two years. The Union is seeking the removal of all discipline assessed in this matter and compensation for all lost wages and benefits.

The Corporation maintains that Ms. Cavanagh knew that Michael Labelle fraudulently issued train tickets under a promotional certificate for her to travel with her companion, and supervisor, Jeff Labelle between Ottawa and Toronto in July 2002. In fact, she provided Michael Labelle with the promotional certificate to issue the train tickets.

The Corporation submits that Ms. Cavanagh's participation in such a fraudulent act breached the bond of trust with the Corporation. The offence warranted significant discipline and the discipline assessed was appropriate in the circumstances.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

There appeared on behalf of the Corporation:

- L. Laplante – Labour Relations Officer, Montreal
- E. J. Houlihan – Sr. Manager, Labour Relations, Montreal
- Y. Noël – Manager, Regional Activities
- R. Guérin – Assistant Superintendent, Transportation & Customer Service, Ottawa

And on behalf of the Union:

- D. Olszewski – National Representative, Winnipeg
- D. Andru – Regional Bargaining Representative, Toronto
- R. Massé – Regional Bargaining Representative, Montreal
- D. Rainville – Local Chairman, Ottawa
- S. Auger – Local Chairman, Montreal
- P. Rouleau – Regional Bargaining Representative, Montreal
- J. Labelle – Witness
- M. Labelle – Witness

FOR THE CORPORATION:

(SGD.) L. LAPLANTE
FOR: DIRECTOR, LABOUR RELATIONS

AWARD OF THE ARBITRATOR

The facts relating to this grievance are recounted in detail in **CROA 3345**, and need not be repeated here. On a review of the evidence the Arbitrator is satisfied that the grievor, Ms. Jodie Cavanagh, did knowingly become involved in the improper use of a promotional voucher, as a result of which she received the benefit of an upgraded roundtrip ticket between Ottawa and Toronto on July 26-28, 2002. It is arguable that in the circumstances the grievor would have been subject to discharge. However the Corporation decided, in light of her sixteen years of service, that an appropriate penalty would be the assessment of demerits coupled with the grievor being disqualified from the position of Control Clerk for a period of two years of cumulative compensated service, along with a restriction from working any position of trust and responsibility such as Senior Counter Sales Agent or In-Charge.

The evidence confirms to the Arbitrator's satisfaction that Ms. Cavanagh became knowingly involved in the scheme put together by Ottawa Manager Jeff Labelle. It is difficult to understand on what other basis she would have viewed her own gesture in sending a blank promotional travel certificate to Mr. Jeff Labelle's brother, Michael Labelle, on July 22, 2002. On the whole the Arbitrator does not accept her explanation that she had no idea what the certificate was to be used for. While there may be some partial truth in the assertion of Ms. Cavanagh that the ticketing was done through Kingston to conceal the close relationship then developing between herself and Manager Jeff Labelle, the fact that the tickets themselves reflected the use of a promotional voucher, and that she obviously travelled in VIA 1 on the trip in question, leaves serious doubt about her understanding of what transpired and her obvious failure to report any irregularities to the Corporation. In fact, during the course of her disciplinary interview she acknowledged that she did realize that the tickets were issued with a promotional voucher on the day that she left, when it became obvious that she was travelling in VIA 1.

The Arbitrator appreciates that the discipline assessed against Ms. Cavanagh is of a severe degree. However, I do not consider that in this circumstance the coupling of demerits with an effective demotion is inappropriate. Nor do I consider it appropriate to reverse the suspension of the grievor for the period of three days she was held out of service, given the language of the collective agreement. I am, however, satisfied that the assessment of the full amount of forty-five demerits, coupled with the effective demotion, is arguably excessive in the circumstances. In the Arbitrator's view the assessment of thirty demerits and the disqualifications imposed by the Corporation would have been ample to convey to Ms. Cavanagh the importance of not abusing the Corporation's system of promotional vouchers.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's disciplinary record be adjusted to reflect the assessment of thirty demerits coupled with the disqualifications and restrictions assessed by the Corporation.

June 13, 2003

(signed) MICHEL G. PICHER
ARBITRATOR