

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3345

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 the dismissal of Mr. Mike Labelle.

UNION'S STATEMENT OF ISSUE:

On August 13, 2002, Mr. Michael Labelle was assessed 60 demerits for his alleged "connection with the Promotional Travel Certificate #023154, issued July 22, 2002."

It is the Union's position that the grievor is innocent of the charges against him and that the Corporation's entire case is based on circumstantial evidence. In the Union's opinion the employer has failed to show by clear and cogent evidence that the grievor is guilty of any wrongdoing.

The Corporation cites the grievor's blood relationship, between himself and Jeff Labelle, the grievor's brother and immediate supervisor, as being circumspet enough to warrant the dismissal of the grievor, in his brother's use of a promotional certificate. It is the Union's position that any involvement by the grievor can only be attributed his inexperience and following the direct orders of his supervisor, Mr. Jeff Labelle.

The Union is requesting the reinstatement of Mr. Michael Labelle without loss of wages, benefits or seniority.

CORPORATION'S STATEMENT OF ISSUE:

On August 13, 2002, Michael Labelle was assessed 60 demerits and his employment was terminated for fraudulently issuing a promotional travel certificate on July 22, 2002.

It is the Union's position that the grievor is innocent of the charges against him and that the Corporation's entire case is based on circumstantial evidence. In the Union's opinion the employer has failed to show by clear and cogent evidence that the grievor is guilty of any wrongdoing. The Union further contends that any involvement by the grievor can only be attributed to his inexperience and the fact that he was following the direct orders of his supervisor, Mr. Jeff Labelle. The Union is seeking the reinstatement of Mr. Labelle and compensation for all lost wages, benefits and seniority.

The Corporation maintains that Michael Labelle fraudulently issued tickets for his brother Jeff Labelle who was working as his supervisor. The tickets were for Jeff Labelle and his companion, Jodie Cavanagh, to travel first class Ottawa to Toronto return in July 2002.

As he held a position of trust, his actions have irreparable breached the bond of trust with the Corporation. Under the circumstances, the Corporation maintains dismissal was warranted.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE CORPORATION:

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

There appeared on behalf of the Corporation:

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

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor, In-Charge Ticket Sales Agent Michael Labelle of Kingston, became involved in what the Arbitrator is satisfied was an improper scheme of his brother, Mr. Jeffery Labelle, who was Manager of Customer Services in Ottawa, to improperly obtain and use a promotional travel certificate for Mr. Jeffery Labelle and his companion, Ottawa employee Jodie Cavanagh.

As part of its marketing strategy to promote rail travel the Corporation issues promotional travel vouchers. The vouchers can be utilized for travel in coach, VIA 1 or sleeping accommodation and are usually issued by authorized directors and managers to various organizations, including public charities. It also appears that in the past such vouchers were made available to employees, apparently for a time on a basic rule of thumb of one voucher per employee per year. More recently, however, the Corporation has cut back on the use of travel vouchers by employees, substituting for each employee the issuance of one passport per year which can be used in addition to the employee's own pass. It is not disputed, however, that promotional vouchers can still be given to employees by properly authorized supervisors, but that no supervisor is authorized to issue such a voucher for his or her own use.

The evidence confirms that at the Ottawa Station, where Mr. Jeff Labelle was employed as a manager, a procedure had been adopted to attempt to ensure accountability with respect to the utilization of promotional vouchers. To that end all filled out vouchers issued were photocopied and retained in a binder. The evidence confirms that in July of 2002 Mr. Jeff Labelle and Ottawa Station Control Clerk Jodie Cavanagh had commenced a relationship which has since matured to their living together. Mr. Labelle and Ms. Cavanagh decided to travel together from Ottawa to Toronto on July 26, 2002, returning on July 28, 2002. Their employee passes would have entitled them to take the trip in coach class. A promotional voucher would have allowed them an upgrade, without additional expense, into VIA 1, an additional value of approximately \$160.00.

In preparation for their trip Mr. Labelle directed Ms. Cavanagh to forward a blank promotional voucher to his brother Michael Labelle, who was then one of two in-charge ticket agents at the Kingston Station. She did so on July 22, 2002. Meanwhile Mr. Jeff Labelle, apparently while he was in Cornwall, called the ticket agent at the Cornwall Station to reserve two seats in VIA 1 class for himself and Ms. Cavanagh, booking both reservations under his own name.

Mr. Michael Labelle acknowledges that he was aware of the travel certificate which was sent to him by Ms. Cavanagh on July 22, 2002. He relates that he received a phone call from his brother, who is his direct supervisor, advising that he was sending him a promotional voucher that he was to fill out for Jeff Labelle and Jodie Cavanagh for the round trip tickets between Ottawa and Toronto, and that he was to send those tickets to Ottawa. Michael Labelle did as he was told. However, in processing that request Mr. Michael Labelle did not indicate the name of the travellers on the face of the promotional voucher. That document, tendered in evidence before the Arbitrator, contains no names in the space provided for the names of the travellers and contains only the notation "Chamber of Commerce" in the box provided for the association which has been given the promotional voucher. When asked to explain that entry on the voucher during the course of his disciplinary investigation Mr. Labelle stated that it was a mistake on his part, prompted by habit developed from the time when he worked in Cornwall and issued promotional vouchers to the local Chamber of Commerce as part of his involvement in VIA's Ambassador program.

In effect, what transpired is that Mr. Jeff Labelle, who could not properly issue a promotional voucher in his own name and for his own use, directed his brother, a subordinate employee who was directly supervised by him, to sign and approve the blank voucher, providing a VIA 1 ticket upgrade to himself and to Ms. Cavanagh for their round trip between Ottawa and Toronto on the weekend of July 26-28, 2002. It appears that what occurred came to light only by reason of a letter written by a disgruntled employee to corporate higher management in Montreal, complaining of the uneven granting of voucher privileges among employees. An ensuing investigation resulted in the forced resignation of Mr. Jeff Labelle, the discharge of Michael Labelle which is the subject of this award, and the discipline by the assessment of demerits and an effective two year demotion to Control Clerk Jodie Cavanagh (CROA 3344).

At issue in the case at hand is whether, as the Corporation alleges, Kinston In-Charge Ticket Agent Michael Labelle acted improperly in the facilitation of the issuing of ticket upgrades for the advantage of his brother, then Manager Jeff Labelle of Ottawa, and his companion Ms. Cavanagh. The grievor denies any complicity in wrongdoing, and asserts, as he did during the investigation, that he had no idea that he was assisting in contravening any Corporation policy in processing the tickets as he did for his brother and his brother's companion. At issue is whether the grievor did act in a manner inconsistent with his obligation of fidelity to the Corporation by facilitating what he knew or reasonably should have known was a violation of Corporation rules concerning the issuing of promotional vouchers. If the answer to that question is in the affirmative, the issue then becomes the appropriate measure of discipline in the circumstances.

The Arbitrator is satisfied that the explanation given by Mr. Michael Labelle is not persuasive. Firstly, he knew, or reasonably should have known, that his brother could not issue a voucher for his own use. He also knew that it would have been a simple matter for Jeff Labelle to have his own supervisor in Ottawa, Mr. Richard Guérin, approve the voucher, which in all likelihood would have been easily done. I find it difficult to believe that Michael Labelle would not have been alerted to some irregularity by the fact that his brother forwarded to him, through Ms. Cavanagh, a single voucher which he knew would be used for his brother's own advantage. Nor is the credibility of Michael Labelle's account enhanced by the fact that the voucher itself, as filled out by the grievor, contains no reference whatsoever to its use by Mr. Jeff Labelle or Ms. Jodie Cavanagh. The fact that the only entry on the voucher is "Chamber of Commerce" is highly suspect, and leads to the more probable inference that it was so recorded for the purpose of avoiding detection in the event of any audit or review of the voucher document in the future. Similarly, it is of some concern that Mr. Michael Labelle received instructions from his brother to change the names on the two tickets which the grievor issued to eliminate the first name of the two passengers, and to substitute their first initial. The tickets so framed, with a reference on their face to the use of a promotional voucher, might be less likely to lead to the identification of Mr. Jeff Labelle and his companion as the beneficiaries of the voucher. In the result, therefore, the Arbitrator does not accept the explanation of entire innocence advanced by the grievor in the case at hand. I am satisfied that he was involved, knowingly, in a degree of concealment in the use of a promotional voucher, at the direction of his brother.

The issue then becomes whether the summary discharge of Mr. Labelle is an appropriate outcome, or whether the Arbitrator should, in the circumstances, substitute a lesser penalty. In weighing that issue there are mitigating factors which must be examined in considering whether, as the Corporation asserts, the bond of trust has been irrevocably broken in relation to the continued employment of the grievor. Firstly, the material before the Arbitrator does establish that the Corporation has made wide-spread use of promotional vouchers throughout its system. There seems to have been some degree of vagueness or uncertainty as to who within the Corporation is authorized or issue promotional vouchers. Indeed in the case at hand there is some dispute between the parties concerning the signing authority held by the grievor in that regard. On the whole, therefore, it would not appear disputed that the system governing the issuing of promotional vouchers, particularly for the advantage of employees, was not as rigorous as it has since become. That does not change the fact that on one point, however, the rule was clear: no manager or employee was authorized to issue a promotional voucher for himself or herself.

A second mitigating factor which must be considered in the case at hand is the unusual circumstance by which the grievor found himself effectively ordered by his brother, who was also his direct supervisor, to use the blank voucher forwarded to him to issue the ticket upgrades which he knew to be in the name of Jeffery Labelle and Jodie Cavanagh. The Arbitrator rejects the evidence of Mr. Jeffery Labelle to the effect that he did not consider that he was doing anything wrong when he knew that he could not sign a voucher for himself, and yet directed his own subordinate, his brother, to do just that. For reasons he best appreciates, Mr. Jeffery Labelle avoided seeking the proper approval of his own supervisor for the issuing of the voucher, seeking to pervert the system of accountability by having the voucher issued by his brother, an employee under his own supervision.

By any account, the foregoing facts reveal an employee being placed under pressure to facilitate wrongdoing by a supervisor who had the authority to impact his employment security and advancement. While the Corporation obviously does not condone the abuse of authority engaged in by Mr. Jeffery Labelle, the fact remains that its own manager did engage in the wrongful application of undue influence and direction on the grievor, a subordinate employee in a vulnerable position. While that reality may not justify the participation in the scheme engaged in by the grievor, it is a factor to be considered in mitigation, along with the evidence touched upon above concerning a degree of laxity in the overall administration of the promotional voucher system among employees. The equities would suggest that some latitude should have been given by the Corporation in considering the appropriate disciplinary measure, given the obvious wrongdoing of the primary mover, its own manager, Mr. Jeffery Labelle. Nor, given the expression of regret reflected in the statement of Michael Labelle at the investigation, is there reason to believe that a young employee who is the victim of his own error in judgement cannot become a trusted and productive employee. (See **CROA 2692.**)

The Arbitrator is satisfied that it is appropriate to consider a substitution of penalty in the case at hand. I accept the sincerity of the remarks made by Michael Labelle during the course of his disciplinary investigation to the effect that he is his own person and that he has gained considerable experience from the ill-advised actions in which he became involved at the direction of his management supervisor, his own brother. For these reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for any wages and benefits lost, and without loss of seniority. The demerits assessed against Mr. Labelle shall be reduced to thirty, and the period between his termination and reinstatement recorded as a suspension for his involvement in the fraudulent issuing of a promotional travel certificate on July 22, 2002.

June 13, 2003

(signed) MICHEL G. PICHER
ARBITRATOR