

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3394

Heard in Montreal, Tuesday, 13 January 2004

concerning

VIA RAIL CANADA INC.

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE**

DISPUTE:

Discipline assessed to E. MacKinnon and G. MacDonald.

BROTHERHOOD'S STATEMENT OF ISSUE:

On November 11, 2003, the grievors were called to attend hearings in connection with the operation of Train 61 on July 19, October 2 and October 11, 2002, and their alleged failure to comply with notice HQ02-19 and Montreal Terminal Operating procedures manual.

Following the investigation they were both disciplined 25 demerits marks.

The Brotherhood is disputing the penalty assessed.

Remedy sought: that the discipline be removed from their records.

FOR THE BROTHERHOOD:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

| | |
|-----------------|---|
| E. J. Houlihan | – Sr. Manager, Labour Relations, Montreal |
| G. Benn | – Labour Relations Officer, Montreal |
| J. P. Pollender | – Manager, Customer Service, Montreal |
| W. Buckley | – Manager, Customer Service, Toronto |

And on behalf of the Brotherhood:

| | |
|------------------|------------------------------|
| J. R. Tofflemire | – General Chairman, Oakville |
| E. MacKinnon | – Grievor |
| G. MacDonald | – Grievor |

AWARD OF THE ARBITRATOR

The instant grievance involves the assessment of twenty-five demerits for three incidents of delay to the departure of train no. 61 being operated by Locomotive Engineers E. MacKinnon and G. MacDonald.

The record confirms that on July 19, 2002 the grievors were six minutes late in departing Montreal on train no. 61. That delay appears to have been incurred by reason of their delaying the necessary brake test by unduly awaiting the removal of the "red card" from the locomotive. The removal of the red card indicates the completion of work by equipment maintenance personnel. The removal of the card is not, however, a condition precedent to conducting a no. 3 brake test on the train. A similar delay was encountered on October 2, 2002, totalling some five minutes.

The final incident occurred on October 11, 2002, when the train operated by the grievors departed two minutes late. Additionally, on that occasion radio communication between the grievors during the process of backing their train into Central Station after picking it up at the Montreal Maintenance Centre revealed the use on their part of humorous banter inconsistent with radio protocols of the CROR. The record also indicates, beyond dispute, that the grievors were some twenty minutes late in arriving on the platform for train no. 61 on October 11, 2002.

On the whole, the Arbitrator must agree with the Corporation that the incidents reviewed do demonstrate an unacceptable degree of nonchalance on the part of the grievors. Notwithstanding their long service of twenty-nine years each, they cannot claim immunity from the application of appropriate discipline for such conduct. That is particularly so in an industry where the Corporation, as a high-profile public carrier, can be easily targeted for public criticism in relation to late departures and arrivals. On the whole the Arbitrator is satisfied that discipline was deserved and that for the combined incidents the assessment of twenty-five demerits is not inappropriate.

The grievance must therefore be dismissed.

February 19, 2004

(signed) MICHEL G. PICHER
ARBITRATOR