

**BUREAU D'ARBITRAGE ET DE MÉDIATION
DES CHEMINS DE FER DU CANADA**

CAUSE NO. 3723

entendu à Montréal, le jeudi, le 15 janvier 2009

concernant

VIA RAIL CANADA INC.

et

**LE SYNDICAT NATIONAL DE L'AUTOMOBILE, DE L'AÉROSPATIALE, DU
TRANSPORT ET DES AUTRES TRAVAILLEURS ET TRAVAILLEUSES DU
CANADA (TCA)**

LITIGE :

Imposition de vingt (20) points de démérites au dossier de M George Achillias et son congédiement subséquent par accumulation de points de démérites.

EXPOSÉ CONJOINT DU CAS :

M George Achillias travaillait comme Agent de ventes par téléphone au Bureau des ventes par téléphone de Montréal.

Le 17 février 2006, M Achillias a été enquêté pour « Manque de disponibilité téléphonique au travail ».

Suit à cette enquête, vingt (20) points de démérites furent attribués au dossier de M Achillias. Le Syndicat réclame la radiation de la mesure disciplinaire imposée au dossier de M Achillias et sa réintégration suite à son congédiement le 17 février 2005.

La Société soumet que les points de démérites imposées étaient raisonnable et justifié. La Société décline la demande du Syndicat.

POUR LE SYNDICAT :

REPRÉSENTANT NATIONAL

(SGN.) D. ST-LOUIS

Représentaient la Société :

B. A. Blair
I. Kluka
J. Rondeau
D. Stroka
J. Pastor

POUR LA SOCIÉTÉ :

POUR LE DIRECTEUR, RELATION DU TRAVAIL

(SGN.) B. A. BLAIR

– Sr. Advisor, Labour Relations, Montreal
– Manager, BVT, Montreal
– Labour Relations Officer, Montreal
– Sr. Advisor, Labour Relations, Montreal
– Advisor, Labour Relations, Montreal

Et représentaient le Syndicat :

D. St-Louis – Représentative national, Montréal
F. Sauvé – Président des griefs, Montréal
S. Allen – Représentant régional, Montréal
G. Achillias – Plaignant

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor did fail to meet the standard of productivity with respect to his availability to handle incoming telephone calls in the Corporation's telephone sales office in Montreal. It does not appear disputed that the efficiency standard required is 83.3% and the grievor was assessed, during the period of January 1 to January 31 of 2005, as having registered an average daily availability of 80.6%.

The grievor's record stood at fifty-five demerits at the time of the discipline which is the subject of this award. Following a disciplinary investigation he was assessed with a penalty of twenty demerits. That discipline, coupled with the discipline received for a prior incident (see **CROA&DR 3722**), resulted in his discharge.

There can be no doubt but that the grievor's failure of productivity rendered him liable to discharge. There are, however, substantial mitigating factors to be considered in the case at hand. The record discloses that in the years prior to his termination Mr. Achillias registered a very high rate of absenteeism. It appears that was by reason of his admitted addiction to cocaine, a condition for which he was repeatedly given the opportunity of absences to follow detoxification programs. He did follow a number of such programs, although with limited ultimate success.

The material before the Arbitrator indicates that he has now succeeded in controlling his addictive condition, it would appear for a period of close to two years. Bearing in mind that drug addiction is a disability which merits accommodation under the **Canadian Human Rights Act**, and acknowledging that indeed the Company did make reasonable efforts to accommodate the grievor prior to his discharge, the Arbitrator nevertheless considers that this is an appropriate case for a last chance reinstatement, without compensation, subject to conditions fashioned to protect the Corporation's interests.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that Mr. Achillias be returned to his employment forthwith, without loss of seniority and without compensation for any wages or benefits lost. The grievor's return to work shall be conditioned on his agreeing to maintain standards of productivity at least equal to the average for his fellow employees, in the same classification and location, and it shall also be conditioned on his maintaining a rate of absenteeism at work which does not exceed the average for the same group, both conditions to apply for a period of not less than two years. Should the grievor fail to meet either of these conditions in any quarter, he shall be subject to immediate termination without recourse to arbitration save with respect to the question of the calculation of the grievor's performance or attendance and the average performance or attendance of other employees.

January 19, 2009

(signed) MICHEL G. PICHER
ARBITRATOR