

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3950

Heard in Calgary, Wednesday, 10 November 2010

Concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE – UNION:

Appeal the assessment of discipline to Locomotive Engineer Carl Pingitore of Winnipeg, MB, for “Contributing to the delayed departure of Deadhead Assignment from Winnipeg Terminal to Sioux Lookout.”

DISPUTE - CORPORATION:

The assessment of 10 demerit marks to the discipline record of Mr. Carl Pingitore.

UNION’S STATEMENT OF ISSUE:

On February 12, 2010, Mr. Pingitore was required to be deadheaded to Sioux Lookout due to a derailment on the CN line on February 11, 2010 that resulted in delays to VIA’s operation. Mr. Pingitore reported for duty on time at 09:00 but the taxi was dispatched to the wrong location and did not arrive at the VIA Station until approximately 10:00.

The Corporation held an investigation into the incident claiming that Mr. Pingitore intentionally delayed the deadhead departure in order to delay the subsequent departure of train #1 from Sioux Lookout later that evening. As a result, Mr. Pingitore was assessed 10 demerits.

The Union contends that the Corporation did not prove any guilt with regards to intentionally delaying the deadhead or the return trip on VIA #1. The Union further contends that the investigation was not fair and impartial in violation of article 20 of agreement 1.4 given the two previous investigations stemming from the same round trip.

It is the Union’s position that Mr. Pingitore’s discipline is unwarranted and should be expunged or, in the alternative, the discipline should be significantly reduced.

The Corporation’s response has been the acknowledgement of the Union’s grievance, which was submitted at Step III of the grievance procedure on June 29, 2010.

CORPORATION'S STATEMENT OF ISSUE:

On February 12, 2010, Mr. Pingitore was instructed to report at 09:00 to travel deadhead by taxi from the Winnipeg terminal to Sioux Lookout. At 10:00 the taxi had not appeared as scheduled. Mr. Pingitore did not report this delay to his superiors. Mr. Pingitore departed Winnipeg at 10:25 with a 1 hour and 25 minute delay.

On February 22, 2010, an informal investigation was held concerning the delay to Mr. Pingitore's deadhead tour of service. Following the informal investigation Mr. Pingitore was assessed ten demerit marks.

The Corporation submits that Mr. Pingitore deliberately failed to advise his superiors of the missing taxi thereby intentionally delaying the departure of his deadhead tour of service by 1 hour and 25 minutes. The Corporation further submits that Mr. Pingitore is a highly experienced, short service employee who is familiar with the deadhead process and deliberately failed to report the missing taxi.

Under the circumstances, the Corporation maintains that the discipline was warranted and appropriate.

FOR THE UNION:
(SGD.) T. MARKEWICH
FOR: GENERAL CHAIRMAN

FOR THE CORPORATION:
(SGD.) D. STROKA
SENIOR ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Stroka	– Sr. Advisor, Labour Relations, Montreal
B. A. Blair	– Sr. Advisor, Labour Relations, Montreal
Wm. Mann	– Manager, Train Operations – East

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
T. Markewich	– Vice-General Chairman, Edmonton
G. Mensaghi	– Local Chairman, Division 854
C. Pingitore	– Grievor

AWARD OF THE ARBITRATOR

The record confirms that as part of his regular assignment on February 11, 2010 the grievor was originally scheduled to operate train no. 2 from Winnipeg to Sioux Lookout, departing Winnipeg at 23:30. In fact a major derailment west of Winnipeg caused changes in train operations. In the result, the grievor, Mr. Pingitore, was called to report for duty at the Winnipeg Terminal at 09:00 to deadhead by taxi from Winnipeg

to Sioux Lookout. That was done in order to allow him and his crewmate to handle their return train from the away from home terminal of Sioux Lookout the following morning.

The evidence reveals that Mr. Pingitore and his workmate, Mr. Arthur Buisson, reported on time at the Winnipeg Terminal to take their taxi to Sioux Lookout. Normally the taxi should have been there at 09:00. In fact the taxi company had apparently been misinformed as to the pick up point and proceeded to the Winnipeg Maintenance Centre. The error was apparently not discovered until approximately 10:07, at which point the cab was dispatched to the Winnipeg terminal, arriving there at 10:18. It then departed for Sioux Lookout at 10:25.

The Corporation maintains that the grievor was responsible for the delay in the departure of his deadhead assignment because he failed to alert anyone as to the tardiness of the taxi, and indeed the error was not discovered until it was corrected by the taxi company itself. On that basis, following a disciplinary investigation, he was assessed ten demerits.

The Arbitrator is compelled to agree with the Corporation's judgement in this matter. While a delay of some ten to fifteen minutes might be normal, I have some difficulty understanding how the grievor and his mate could not have arrived at reasonable concerns as to the timely execution of their deadhead assignment when there was no taxi present for them a half hour after the scheduled time, much less one hour and eighteen minutes after that time, when the cab finally did arrive without their

having done anything. I am not persuaded by the grievor's suggestion that he and Mr. Buisson had no knowledge of the problems which might be confronting the cab company. I am satisfied that a normal regard for their employer's interests would have caused reasonable employees to alert management to the fact that a cab was not there as scheduled, or at least to make inquiries with respect to what might be happening. It appears that the almost hour and a half delay incurred created a domino effect which the Corporation came to view as contributing to the delay of their train the following morning, given that the grievor and his mate booked eight hours rest upon their arrival in Sioux Lookout.

In the result, the Arbitrator is satisfied that the assessment of ten demerits was within the appropriate range of discipline for what can only be characterized as an unsatisfactory degree of indifference or negligence on the part of the grievor. The grievance must therefore be dismissed.

November 15, 2010

MICHEL G. PICHER
ARBITRATOR