

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

CASE NO. 3951

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 your delay to your assignment while enroute to Sioux Lookout on February 12, 2010, and subsequent delay to VIA Train #1 on February 13, 2010."

DISPUTE – CORPORATION:

The assessment of 25 demerit marks to the discipline record of Mr. Carl Pingitore.

UNION'S STATEMENT OF ISSUE:

On February 12, 2010, Mr. Pingitore was required to deadhead 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. While enroute to Sioux Lookout, Mr. Pingitore took the customary 30 minute stop to use washroom facilities, stretch and obtain a snack. On arrival at Sioux Lookout, Mr. Pingitore and his crew booked 8 hours rest in order to be fit for the return portion of the trip on VIA train #1.

The Company held an investigation into the incident claiming that Mr. Pingitore intentionally delayed the deadhead departure and while enroute in order to delay the subsequent departure of train #1 from Sioux Lookout later that evening. As a result, Mr. Pingitore was assessed 25 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 responses have been the acknowledgement of the Union's grievance, which was submitted at Step III of the grievance procedure on June 29, 2010, and a claim that the Step II was never received but only requested the mail tracking confirmation.

CORPORATION'S STATEMENT OF ISSUE:

On February 12, 2010, Mr. Pingitore delayed the departure of his dead-head tour of duty by 1 hour and 25 minutes. While enroute to Sioux Lookout, Mr. Pingitore took an extended 30 minute break while already late. On February 27, 2010 an investigation was held concerning the delay compounded enroute. Following the investigation Mr. Pingitore was assessed twenty-five demerit marks.

The Corporation submits that Mr. Pingitore deliberately increased the delay enroute when already late thereby compounding the initial delay. The Corporation further submits that Mr. Pingitore is a highly experienced, short service employee who is familiar with the detrimental effects that even a minor delay can have on the on-time performance of a train especially in the case of a passenger train.

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

As related in **CROA&DR 3950**, the grievor and his workmate were deadheaded from Winnipeg to Sioux Lookout on February 12, 2010. It is not disputed that during the course of the trip, which took some six hours, the grievor and his crew mate, along with the taxi driver, stopped for a thirty minute break enroute to have a meal and stretch their

legs. They therefore arrived in Sioux Lookout at 16:25 hours at which point they booked eight hours rest and requested a two hour wake-up call.

The Corporation maintains that the combination of events, including the late departure of the grievor and his workmate from Winnipeg, related in **CROA&DR 3950**, the thirty minute meal break which they took enroute during their deadhead assignment and the fact that they booked eight hours rest with an additional two hour wake-up call at Sioux Lookout caused a subsequent delay in their assignment, Train no. 1, on February 13, 2010. It is not disputed that that train, scheduled to depart at 01:16 in fact left the station in Sioux Lookout after a fifty-seven minute delay. It appears that it was some nineteen minutes late in its subsequent arrival at Winnipeg.

The Corporation submits that the grievor was engaged in a deliberate attempt to delay Train no. 1. While it acknowledges that he cannot be disciplined for booking eight hours rest, which is his right under the collective agreement, it maintains that that fact, coupled with the thirty minute break during the deadhead trip from Winnipeg to Sioux Lookout, contributed unreasonably to the train delay.

The Arbitrator cannot agree. The uncontroverted evidence before me is that it is normal for a deadhead trip from Winnipeg to Sioux Lookout to take some six hours. The Arbitrator is advised, without contradiction, that the crews deadheading that route normally stop two times enroute. In the Arbitrator's view it is doubtful whether stopping only once for perhaps ten or fifteen minutes would have made a material difference in

the on time operation of Train no. 1 on the following day. More importantly, I do not consider it unreasonable for the grievor and his workmate to have taken a thirty minute break during the course of a six hour taxi trip, to allow themselves to stretch their legs, use a washroom and take a meal. There is, in my view, no evidence to suggest that the break which was taken, which was plainly within the norm, reflected a conspiracy on the part of the grievor to sabotage the normal operation of Train no. 1.

In an alternative submission the Union maintains that the grievor was denied a fair and impartial investigation. It draws to the Arbitrator's attention what it characterizes as abusive and accusatory questioning on the part of the Corporation's investigating officer. Counsel for the Union submits that it is clear from the record of the Corporation's investigation that the officer plainly prejudged the issue of the grievor having plotted to delay Train no. 1. Upon a review of the record of the investigation the Arbitrator can readily understand the Union's concern. Given the disposition of the grievance on its merits, I find it unnecessary to deal with that issue.

The grievance is therefore allowed. The Arbitrator directs that the twenty-five demerits assessed against the grievor be removed from his record forthwith.

November 15, 2010

(signed) MICHEL G. PICHER
ARBITRATOR