

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4067**

Heard in Montreal Wednesday, 14 December 2011

Concerning

VIA RAIL CANADA INC.

And

**THE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS' UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The assessment of 20 demerit marks for alleged failure to protect his assignment on May 20th, 2010.

JOINT STATEMENT OF ISSUE:

On June 3, 2010 an investigation was held for Mr. David Rudyk for his alleged failure to protect his assignment on May 20, 2010 and subsequently assessed 20 demerits marks.

The Union contends that there are mitigating facts what must be considered including, but not limited to, the fact that the grievor suffers from substance abuse and is being treated for such. The Union further submits that the allegations of conduct unbecoming a VIA Rail employee on May 10 and 11, 2010 and the failure to protect his assignment on May 20, 2010 are one and the same and should not be assessed separately.

The Union seeks reinstatement with full employment, without loss of seniority and reimbursement of lost wages and all benefits.

The Corporation submits that the employee had a history of absenteeism and was aware of reporting procedures, admits the offence.

The Corporation maintains that the discipline assessed was appropriate in the circumstances.

**FOR THE UNION:
(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE**

**FOR THE CORPORATION:
(SGD.) B. A. BLAIR
SENIOR ADVISOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

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|-------------|---|
| B. A. Blair | – Sr. Advisor, Labour Relations, Montreal |
| D. Stroka | – Sr. Advisor, Labour Relations, Montreal |
| J. Maillot | – Sr. Advisor, Labour Relations, Montreal |
| K. Thomas | – Customer Experience Manager, |

There appeared on behalf of the Union:

- | | |
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| R. J. Fitzgerald | – National Staff Representative, Toronto |
| D. Kissack | – Regional Representative, Western Region |
| D. Rudyk | – Grievor |

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on May 10, 2010 the grievor, who was scheduled to work, missed his start time and called in some one hour and forty-five minutes later, inquiring as to whether he should come to work. He was told not to come as another person had been called to cover his shift. Following an investigation he was assessed twenty demerits for that infraction, with particular regard being had to similar offenses committed by Mr. Rudyk in the past. As his discipline stood at forty demerits prior to this incident, that placed him in a dismissable position.

The events of May 10, 2010 are to some degree in contemporaneous relation with the events of the following day, May 11, 2010 when the grievor apparently appeared at work in an inebriated state. That incident and the resulting discipline is dealt with separately in **CROA&DR 4068**. For the reasons related in that award, however, the Arbitrator determines that it is appropriate to remove the twenty demerits

from the grievor's record, and to reinstate him into his employment subject to the conditions described in the award in **CROA&DR 4068**.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR