

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

CASE NO. 4332

Heard in Montreal, July 10, 2014

Concerning

VIA RAIL CANADA INC.

And

UNIFOR

DISPUTE:

Discharge of Ms. V.B. alleged irregular time reporting as well as time theft from July, 2013 until the present and also for alleged breach of security at the Toronto Maintenance Centre for the same period.

JOINT STATEMENT OF ISSUE:

It is the Union contention that discipline in this case is unwarranted, excessive and that the Corporation is in violation of Article 24.1, 24.2, 24.5, 27.12 of the collective agreement #1 and Section 5(3) of the Personal and Electronics as well as Section 4.2 4.8 and 4.9

The Union requests immediate reinstatement of Ms. V.B. with full seniority; and reimburse her of any and all lost wages and benefits in a make whole fashion.

The Corporation disagrees with the Union and denied the grievance.

FOR THE UNION:
(SGD.) R. Fitzgerald
National Representative

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

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| M. Boyer | – Senior Advisor, Labour Relations, Montreal |
| B. Blair | – Senior Advisor, Labour Relations, Montreal |
| L. Calhau | – Senior Manager Customer Experience, Toronto |
| L. Selesnic | – Manager Customer Experience, Toronto |
| M. Martens | – Senior Advisor Employee Relations, Montreal |
| S. Centoni | – Student, Labour Relations, Montreal |

There appeared on behalf of the Union:

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|---------------|------------------------------------|
| R. Fitzgerald | – National Representative, Toronto |
| D. Andru | – Regional Representative, Toronto |
| V. B. | – Grievor, Toronto |
| J. L. | – Observer, Toronto |
| N. B. | – Observer, Toronto |

AWARD OF THE ARBITRATOR

The facts and issues relating to this grievance were thoroughly reviewed in CROA&DR 4330. In respect of the grievor VB, however, a significant point of distinction arises. While it is obviously unfortunate that this employee has been found to be involved in a form of time theft, it would appear that that conduct is not unprecedented in her employment record. The unchallenged representation of the Corporation is that in 2008 VB committed a similar type of offence by then falsifying the sign-in and sign-out sheet to effectively claim a full day of work when in fact she was absent. While the grievor was, as the Corporation relates, "given a chance" in 2008, when it appears ten demerit marks were assessed against her for that incident, there is an element of recidivism in the instant matter which the Arbitrator simply cannot disregard. The theft of time is obviously a serious infraction. It becomes the more so where, as in the case of the instant grievor it is shown to be a repeat offence, notwithstanding the administration of prior discipline.

The Arbitrator is therefore compelled to conclusion that the circumstances of the instant grievor differ from those of the employees considered in CROA&DR 4330 and 4331, and I am compelled to the regrettable conclusion that this grievance must be dismissed.

July 14, 2014

MICHEL G. PICHER
ARBITRATOR