

CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4755

Heard in Montreal with Video Conferencing, July 16, 2020

Concerning

VIA RAIL CANADA INC.

And

UNIFOR COUNCIL 4000

DISPUTE:

Whether Service Manager M. Theriault validly resigned from his employment at VIA Rail Canada.

JOINT STATEMENT OF ISSUE:

The grievor, who had been employed at VIA Rail for some 13 years prior to the start of the material period, was the subject of numerous disciplinary investigations over the course of approximately four years. He submitted a letter of resignation to the Corporation on or about 29 May 2017.

The Union contends that the grievor was forced to resign from his employment due to ongoing harassment and differential treatment and the resulting decline in his mental health and physical condition over the course of more than five years. It further contends that the Corporation did not live up to its obligations under its attendance management policy, its harassment policy, and the *Canadian Human Rights Act*. The Union has requested compensatory and punitive damages in lieu of reinstatement.

The Corporation contends that that the issue before the Arbitrator is whether the resignation is valid, disagrees with the Union's contentions, and has declined the grievance to date.

FOR THE UNION:
(SGD.) A. Stephen
Regional Representative

FOR THE COMPANY:
(SGD.) A. Baril
Counsel, McCarthy Tétrault

There appeared on behalf of the Company:

A. Baril	– Counsel, McCarthy Tétrault, Montreal
L. Landry-Plouffe	– Counsel, McCarthy Tétrault, Montreal
K. Chapados	– Specialist Advisor, Employee Relations, Montreal

And on behalf of the Union:

A. Stephen	– Regional Representative, Toronto
B. Kennedy	– National Representative, Edmonton
D. Andru	– Treasurer, Toronto

AWARD OF THE ARBITRATOR

1. After carefully reviewing the submissions, materials, and jurisprudence before me, I find that the resignation tendered by Mr. Theriault on May 29, 2017 is valid and binding. For the following reasons, the grievance is dismissed. This decision will only deal with the relevant arguments that were proffered in arriving at my findings.

2. I must ascertain Mr. Theriault's "true" intention and determine whether his conduct expresses the desire to sever the employment relationship. The abundant jurisprudence in this area is clear. Two (2) elements must be identified in assessing each case. First, has the evidence supported a finding of a "subjective intention" to leave the employment. Second, is there "objective conduct" manifesting a continuous effort to carry out that intention.¹

3. Mr. Theriault was on sick leave from December 8, 2016 to May 29, 2017. He met with his reporting manager and the OTS Manager at the Toronto Maintenance Centre on May 29, 2017. The meeting was not scheduled beforehand and was initiated by Mr. Theriault. He informed the managers of his resignation from the Company and remitted a printed resignation letter he had prepared. Mr. Theriault also returned all Company possessions including all tools and both security and employee passes. Management prepared the Termination Clearance and Staff Form during this meeting.

4. This was the first contact the Company had with Mr. Theriault in over five months.

¹ D.M. Beatty, D.J. Brown and A. Beatty, *Canadian Labour Arbitration*, 5th ed, Toronto, Thomson Reuters, 2006, chapter 7 at para 7:7100

5. Prior to meeting with the managers, Mr. Theriault had returned his “float” and unused “c-19s” to the Remittance Clerk at the Toronto Union Station. The “float” is the Company cash advance issued to all its new on-train employees to make change for customers. The “c-19s” are sale tickets records which are numbered and accounted for by the Company. Those items must be returned when an employee leaves the Company permanently.

6. The Company confirmed the resignation by letter dated June 1, 2017. According to management, Mr. Theriault was poised and calm during the resignation meeting. He never mentioned that his decision was induced or provoked by the Company in any way.

7. On June 15, 2017, the Union filed a Step 2 grievance on behalf of Mr. Theriault contending that his resignation was not voluntary. They claim his resignation was made necessary due to the Company’s repeated actions. The Union is seeking pecuniary damages along with punitive damages in an amount commensurate with Mr. Theriault’s suffering and mental anguish.

8. Sixteen days had passed after the resignation meeting occurred without any indication by Mr. Theriault that he wished to rescind his resignation. I find that the evidence clearly establishes a continuous subjective intent by Mr. Theriault to resign. Coupled with the objective conduct of showing up at the workplace and tendering a printed resignation letter, M. Theriault confirmed his desire to sever the employment relationship.

9. The onus lies on the Union to prove that Mr. Theriault was incapable of forming the intent to resign at the time that he did. While I accept that Mr. Theriault may have been stressed and unhappy about his employment relationship, the evidence fails to establish that he was mentally incapable of forming the intent to resign on May 29, 2017.

10. The Union alleges Mr. Theriault was constructively dismissed. It claims he resigned because of the Company's alleged harassing conduct over the years. The threshold to prove incapacity is high, meeting a certain degree of mental debilitation. Although Mr. Theriault may suffer from anxiety and depression, the evidence does not support a finding of mental debilitation. This would require very persuasive medical evidence, and no such medical evidence was provided. To the contrary, M. Theriault's conduct establishes the execution of an organized plan to resign.

11. In light of the circumstances, I have no reason to intervene.

August 7, 2020



AMAL GARZOUZI
ARBITRATOR