

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1121

Heard at Montreal, Tuesday, July 5, 1983

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Discharge of R. Godin, Montreal, for misappropriation of Corporation revenues while assigned as steward-waiter Train 133, September 15, 1982.

JOINT STATEMENT OF ISSUE:

An officer of the CN Police (Special Branch) submitted a written report of his observations while travelling on Train 133, September 15, 1982.

Of the various matters observed, the police officer reported that the grievor served coffee on several occasions in marked re-used styrofoam thermo cups.

Following a hearing, Mr. Godin was discharged for misappropriation of Corporation funds.

The Brotherhood requested that Mr. Godin be re-integrated in the services of VIA with full seniority, benefits and lost wages.

The Corporation rejected the request.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
National Vice-President

FOR THE CORPORATION:

(SGD.) A. GAGNE
Director, Labour Relations

There appeared on behalf of the Corporation:

Andre Leger, - Labour Relations Officer, VIA Rail, Montreal
A. R. Cave - Manager, Human Resources, VIA Rail, Montreal
C. O. White - Labour Relations Assistant, VIA Rail, Montreal

And on behalf of the Brotherhood:

G. Thivierge - Regional Vice-President, CBRT&GW, Montreal
R. Rouleau - Local Chairman, CBRT&GW, Montreal
R. Godin - Grievor

AWARD OF THE ARBITRATOR

In this case it is admitted that the grievor did wash out and re-use a styrofoam cup in which coffee was served to a passenger. The cup was re-used to serve coffee to the same passenger, who was a special agent. What is in issue is whether or not the grievor in fact charged the passenger for coffee served in re-used cups. The agent's testimony is that while the grievor served coffee without charging for it on some occasions, there were others when he served the coffee - in a re-used cup - and charged for it. Since the accounting for revenues from coffee sales is based on the number of cups used, that would mean that the grievor misappropriated Company funds, since he did not account for revenue beyond that related to the number of cups used.

The grievor denies having charged for coffee when the same cup was re-used. He remembers the occasion in question, when the special agent, seated at a table just opposite the counter, ordered a considerable number of coffees with cognac. The agent's testimony is that he drank none of the cognacs, but poured them on the floor. The grievor's evidence is that on some occasions at least he himself poured the cognac into the agent's coffee, which the agent drank. The agent agrees that on at least some occasions the grievor did not charge him for coffee.

On this evidence, I think it cannot properly be said that there is clear and compelling proof, on the balance of probabilities that the grievor misappropriated Company funds. There was no real purpose served in the agent's ordering a substantial number of cognacs only to pour each of them on the floor, as he says he did. It would be odd for that to go unremarked over the course of the trip, where the agent was seated opposite the counter, and where he was engaged in fairly lengthy conversation with the grievor. On the basis of such evidence, I cannot conclude that the Company has met the burden of proof of just cause for discharge.

Accordingly, the grievance is allowed. It is my award that the grievor be reinstated in employment forthwith without loss of seniority and with compensation for loss of earnings or other benefits, save for payment of two days' pay in respect of an adjustment of the investigation at the Union's request.

J. F. W. WEATHERILL,
ARBITRATOR.