

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1162

Heard at Montreal, Wednesday, December 21, 1983

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Discharge of W. Bazinet for removing articles from the Catering
Distribution Centre, VIA Quebec.

JOINT STATEMENT OF ISSUE:

CN Police Officers recovered Corporation articles from two residences
in Lachine, Quebec, one of these being the home of the grievor.

Following a hearing, Mr. Bazinet was discharged for removing articles
from the Catering Distribution Centre.

The Brotherhood considered the penalty of discharge too severe and
requested reconsideration of the decision.

The Corporation has rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
National Vice-President
Relations

FOR THE CORPORATION:

(SGD.) A. GAGNE
Director, Labour

There appeared on behalf of the Corporation:

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| Andre Leger | - Manager, Labour Relations, VIA Rail, Montreal |
| L. Sabourin | - On-Board Services Officer, VIA Rail, Montreal |
| R. Lizotte | - Captain, CN Police, Montreal |
| C. O. White | - Labour Relations Assistant, VIA Rail, Montreal |
| J. Letellier | - Human Resources Officer, VIA Rail, Montreal |

And on behalf of the Brotherhood:

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|--------------|------------------------------------------------|
| G. Thivierge | - Regional Vice-President, CBRT&GW, Montreal |
| I. Quinn | - Accredited Representative, CBRT&GW, Montreal |
| W. Bazinet | - Grievor |
| R. Rouleau | - Local Chairman, Local 335, CBRT&GW, Montreal |
| P. Garneau | - Observer, CBRT&GW, Montreal |

AWARD OF THE ARBITRATOR

The grievor, W. Bazinet, was discharged for theft of company property from its Catering Distribution Centre, VIA, Quebec.

On February 11, 1983 two men identified as Messrs. R. Ross and W. Vipond, informed CN Police that Mr. Bazinet, a VIA employee had given them cutlery, kitchenware, bags of coffee and plastic garbage bags. These articles were presented to the police and a statement was taken with respect to how they came into their possession. Mr. Bazinet was interviewed by Mr. Roger Lizotte and a second police officer with respect to his activities in allegedly removing company property from its premises. Mr. Bazinet co-operated with the investigators and permitted them to inspect his apartment premises without recourse to a search warrant. Articles of the same nature were located in the grievor's apartment.

The grievor, on August 26, 1980, had been assessed 30 demerit marks for a like infraction. That incident was not grieved.

The grievor has eighteen years service with CN and VIA Rail. He is employed as a pantryman and when not engaged in that capacity he performs various janitorial duties including the washing of trays.

Mr. Bazinet did not deny that the articles were in his possession or had been given to Mr. Ross and Mr. Vipond. Apparently the grievor had recently moved into his apartment dwelling with his girl friend. His girl friend had introduced him to Mr. Ross who shared an apartment in the same building. Apparently both Mr. Ross and Mr. Bazinet were new residents of the apartments which were without appropriate cooking and eating utensils. Mr. Bazinet explained that he had simply borrowed the articles from the company until he received his next pay cheque. He then intended to return the said articles to the company after he had purchased his own.

I place no credit in the grievor's explanation. He deliberately converted to his own use company property which he knew or ought to have known would result in his summary dismissal. The uncontradicted evidence confirmed that his story was a sheer fabrication. At all material times the grievor had a substantial amount of money in a bank account. He had the means to purchase the articles he stole from the company. In light of the foregoing, I have been given no reason, in having regard to the grievor's prior act of theft, to mitigate the discharge penalty.

There was some suggestion in the trade union's submission that compassion ought to be exercised on Mr. Bazinet's behalf "because of the man's capacities". I observed Mr. Bazinet's demeanour during the course of his giving evidence. Despite the pathetic nature of his predicament I was satisfied that at all material times the grievor fully appreciated the nature of the acts of theft he committed and that what he was doing was wrong.

Accordingly, the grievance, for the foregoing reasons, must be denied.

DAVID H. KATES,
ARBITRATOR.