

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1203

Heard in Montreal, Tuesday, March 6, 1984

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Employee required to pay the Corporation the sum of \$171.

JOINT STATEMENT OF ISSUE:

On February 2, 1983, the grievor, Mr. M. Duchesneau, Counter Sales Agent I, Montreal, accepted a personal cheque of \$171. from a VIA customer. The bank returned the cheque with the notation "N.S.F.". Following an investigation, the grievor was required, in accordance with the Corporation's policy, to pay the sum of \$171.

The Corporation contends that, because the grievor did not follow the proper procedures when he accepted the cheque, he was required to bear the loss.

The Brotherhood maintains that the payment of \$171. by the grievor to the Corporation is unacceptable and asks that this amount be returned to the grievor.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) TOM McGRATH
National Vice-President

(SGD.) A. GAGNE
Director, Labour Relations.

There appeared on behalf of the Corporation:

Andre Leger	- Manager, Labour Relations, VIA Rail Canada, Montreal
J. Letellier	- Human Resources Officer, VIA Rail Canada, Montreal
J. Paquin	- General Supervisor, Station Sales & Services, VIA Rail Canada, Montreal
G. Tremblay	- Supervisor, Accounting, VIA Rail Canada, Montreal
C. O. White	- Labour Relations Assistant, VIA Rail Canada, Montreal

And on behalf of the Brotherhood:

G. Thivierge	- Regional Vice-President, CBRT&GW, Montreal
I. Quinn	- Representative, CBRT&GW, Montreal
J. L. Desrochers	- Local Chairman, CBRT&GW, Montreal

AWARD OF THE ARBITRATOR

In this grievance there is no dispute that the grievor, Mr. M. Duchesneau, Counter Sales Agent, was negligent in failing to follow appropriate company procedures in verifying the authenticity of a cheque for \$171.00 before accepting it. When the cheque was returned by the bank N.S.F., the company imposed a written reprimand and required the grievor to repay the lost monies. In due course the written reprimand was withdrawn from the grievor's personal file.

In the disposition of this grievance I agree with the trade union's submission that in the absence of a specific provision contained in a collective agreement the imposition of a fine depriving an employee of his rightful salary for work performed is not an appropriate disciplinary response. The appropriate response would be for the company to levy an adequate disciplinary penalty in accordance with the practices and policies hitherto applied in the issuance of discipline.

Again, as I have stated in a previous case, this is a clear example of the employer attempting to discipline an employee for misconduct, namely negligence. It does not convert the employer's response to something other than discipline by its merely suggesting that the sole purpose was to recover monies lost as a result of the employee's misconduct.

The employer is directed to reimburse the grievor in the amount of \$171.00.

DAVID H. KATES
ARBITRATOR