CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1433
Heard at Montreal, Wednesday, November 13, 1985

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Discipline assessed to Mr. R. Masse, Telephone Sales Agent, for leaving his work station without the authority of his supervisor, and not complying with his supervisor's request not to post and distribute bulletins.

JOINT STATEMENT OF ISSUE:

Following an investigation held June 6, 1984 at 8:30 a.m., Mr. Masse was assessed 10 demerit marks for having left his wcrk station without the authority of his supervisor.

Following an investigation held June 6, 1984 at 10:30 a.m. Mr. Masse was assessed 10 demerit marks for refusing to comply with his supervisor's request not to post and distribute bulletins without authorization.

On June 8, 1984, Mr. Masse was suspended pending the results of the above investigations.

The Brotherhood contends that the discipline assessed to Mr. Masse was not justified on the basis that he had received permission from his supervisor to leave his work station. The Brotherhood also contends that the discipline assessed to Mr. Masse for refusing to comply with his supervisor's request not to post and distribute bulletins is not justified on the basis of the lack of supporting evidence. The Brotherhood also requests that Mr. Masse be reimbursed for loss of wages due to above alleged charges.

The Company maintains the position that the discipline assessed was appropriate to the circumstances.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) TOM McGRATH	(SGD.) A. GAGNE
National Vice-President	Director, Labour Relations

There appeared on behalf of the Corporation:

M. St-Jules	- Manager, Labour Relations, VIA, H.Q., Montreal
C. 0. White	- Officer, Labour Relations, VIA, H.Q., Montreal

J. Letellier	- Officer, Human Resources, VIA Quebec
D. Lynch	- Asst. Manager, Telephone Sales Office, VIA Quebec
D. Depelteau	- Observer, Human Resources, VIA Quebec

And on behalf of the Brotherhood:

Gaston Cote	- Regional Vice-President, CBRT&GW, Montreal
Leo St. Louis	- Representative, CBRT&GW, Montreal
A. Baillargeon	- Local Chairperson, Local 301, CBRT&GW, Montreal
Manon Dagenais	- Witness, Montreal
Paul Valcourt	- Witness, Montreal

AWARD OF THE ARBITRATOR

As the Arbitrator advised at the hearing because of the similarity of the facts and issues in both the Masse and Baillarargeon grievances, these cases were consolidated and heard together. (#1433 and #1434)

Both grievors are employed as Telephone Sales Representative by VIA Rail Canada Inc. Each is also an elected official of their local trade union. Mr. Masse holds the office of Secretary of the Grievance Committee, and, Mr. Baillargeon holds the office of Chairman of the Political Education Committee.

The uncontradicted evidence indicated that the grievors at 15:20 hours on May 29, 1984, left their posts during the course of their shifts in order to engage in union business. The grievors' Supervisor was advised as they removed themselves from their jobs.

The nature of the union business involved pertained to the distribution of union pamphlets, or bulletins, to members of the bargaining unit. These events occurred at a time when the employer's telephone sales office was extremely busy. The evidence also indicated that the grievor's ignored their Supervisor's direction to return to their posts.

The grievors were taken out of service for 3 or 4 days after their investigatory interviews were completed. Ultimately the grievor were penalized for their alleged infractions. Mr. Masse was assessed 25 demerit marks for leaving his position without authorization and 10 demerit marks for his insubordination in not complying with his Supervisor's request not to distribute the bulletins. Mr. Baillargeon was assessed twenty and ten demerit marks respectively for these offences.

As a defence to their actions the grievors have relied upon the notion that they were engaged in legitimate union business at the material time in question.

Articles 17.3 and 17.4 of the collective agreement reads as follows:

> "17.3 Employees elected or appointed to serve on committees for investigation, consideration and adjustment of grievances shall, upon request,

> be granted free transportation in accordance with pass regulations and necessary leave of absence without pay.
>
> 17.4 Employees shall, upon request, be granted free transportation within their Area in accordance with pass regulations and leave of absence without pay to attend Brotherhood meetings. Such leave of absence will be granted only when it will not interfere with the Corporation's business nor put the Corporation to additional expense."

It is clear that the type of union business that the grievors engaged in had absolutely nothing to do with "the investigation, consideration or adjustment of grievances". Nor were the grievors required "to attend a Brotherhood meeting". Indeed, the reasons for the grievors' unauthorized leave of absence had absolutely no relevance to the permissible absences recognized under the collective agreement.

And, even if the distribution of pamphlets can be conside as a legitimate trade union activity during the course of an employee's scheduled hours surely the employer cannot be perceived to be condoning such activities when its enterprise is at a busy hour and no advance notice was given. In short, the grievors were properly disciplined for their unauthorized absence from work and their insubordination in failing to follow a reasonable directive of a Supervisor.

Insofar as Mr. Baillargeon's allegation that an improper investigation of his infracation took place contrary to Article 24.2 is concerned, I am not satisfied of the credibilitv of the evidence that was adduced. The transcript of the disciplinary investigation which was taken contemporaneously with that proceeding does not show that Mr. Lynch placed the restrictions on the investigation that were alleged. Rather, the transcript shows that the grievor and his colleague, Mr.Valcourt, refused to cooperate with Mr. Lynch's instructions in confining the investigation, to matters relevant to the charges. As a result, the grievor and Mr.' left the investigation. I have not been satisfied that an effort made by the presiding officer, couched with the responsibility of conducting the investigation, to restricting the material to relevant information is tantamount to an abuse. Accordingly, the grievor at all times left the investigation at his peril.

Insofar as the propriety of the three (3) or four (4) day suspensions are considered, when the grievors were kept out of service after their investigations I am satisfied that Article 24.2 warrants such recourse where the employees might be subject to a "dismissible offence". In the light of the blatant offences the grievors were accused of committing, I cannot fault the Corporation for keeping them out of service until it rendered a decision with respect to the severity of the discipline that was to be assessed.

Notwithstanding the foregoing, I am of the view that the demerit marks assessed against the grievors for their misconduct were extremely harsh and to some extent offended the principle of

progressive discipline. I am of the view that Mr. Masse should have been assessed 15 demerit marks for his initial offence in leaving his work post without authority and Mr. Baillargeon should have been assessed 10 demerit marks for same infraction. I am satisfied that the 10 demerit marks assessed the grievors for the second infraction should be sustained.

Accordingly, subject to the variation in penalty made above, the grievances in all other respects are dismissed.

DAVID H. KATES,
ARBITRATOR.