CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1497

Heard at Montreal, Tuesday, April 8, 1986

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:
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Discharge of Mr. J. W. Walcott for misappropriation of Corporation funds.

JOINT STATEMENT OF ISSUE:
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CN Police officers (Special Branch) submitted written reports of observations made while travelling on Train 45 on December 8, 1984, and Train 68 on March 1, 1985.

Among other matters, the police officers reported observing Mr. Walcott serving coffee in re-used styrofoam thermo cups.

A hearing was held and as a result, Mr. Walcott was discharged for misappropriation of Corporation funds.

The Brotherhood appealed the discharge requesting a less severe penalty.

The Corporation rejected the request.

| FOR THE BROTHERHOOD: | FOR THE CORPORATION: |
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| (SGD.) T. N. STOL | (SGD.) A. GAGNE |
| FOR: National Vice-President | Director Labour Relations |

There appeared on behalf of the Corporation:

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| M. St-Jules | - Manager, Labour Relations, VIA Rail Canada Inc. Montreal |
| C. O. White | - Officer, Labour Relations, VIA Rail Canada Inc. Montreal |
| J. Kish | - Personnel & Labour Relations Officer, VIA Rail Canada Inc., Montreal |
| F. Latendresse | - Inspector CN Police, Montreal |
| A. Deakin | - Observer |

And on behalf of the Brotherhood:

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| Gaston Cote | - | Regional Vice-President, CBRT&GW, Montreal |
| Ivan Quinn | - | Representative, CBRT&GW, |
| J. G. Walcott | - | Grievor |
| Ken Camerson | - | Local Chairman, CBRT&GW, Montreal |

AWARD OF THE ARBITRATOR

The issue in this case is whether the grievor was properly discharged for the misappropriation of company funds.

At the material time in question the grievor was assigned as a Steward Waiter on VIA Train 45, Ottawa to Toronto. At that time two CN Police Constables were observing the grievor in the performance of his duties. It is not disputed that the Police Constables used marked styrofoam cups to establish evidence of the grievor's alleged misappropriation of funds.

Apparently, sales of beverages are credited by the grievor in his reporting at the end of his shift the number of unused styrofoam cups. The difference between the used and unused cups must obviously be accounted for by the payment of monies for the alleged beverages that were sold. It is common ground that VIA has posted a written rule making it "a dismissible offence" for an employee to allow used styrofoam cups to be used again. The obvious ourpose of the rule is to prevent the very misappropriation that the grievor stands accused of.

The trade union has admitted, having regard to the CN Police's recourse to marked cups, to the grievor's violation of the rule. Accordingly, it has also admitted that monies paid for beverages secured by the repeated use of the same styrofoam cup were not submitted to VIA Rail. Rather, the grievor kept those funds on his own person and mixed them with the tips he received while serving his customers. In short, the grievor used monies that should have been designated as company funds for his own purposes.

The trade union has attempted to excuse the grievor's conduct by attributing confusion to his alleged mixing of company funds with his own tips. Because of that confusion it was argued that he cannot or should not be viewed as having formed the necessary intent to steal.

I find no merit to this argument. The grievor, if confused, still was aware that he knowingly mixed monies with his own that ought to have been designated as company funds. Moreover, he did this as a result of his admitted violation of a known rule. Even if he lacked a guilty intent he still could have confessed his error, if that were the ca to the company upon the termination of his shift. In that manner upon attempting to make restitution for the unaccounted funds he would have purged himself of any charge of theft.

The truth of the matter is the grievor was caught in the act of theft, And, once caught, the trade union has attempted to rely on a defence that simply has no merit.
Because theft, as so many CROA cases have indicated, undermines the bond of trust between the employer and its employees, the grievance

must be denied.

DAVID H. KATES,
ARBITRATOR.