CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1617

Heard at Montreal, Tuesday, February 10, 1987

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Steward J. Stimpfl.

JOINT STATEMENT OF ISSUE:

Mr. J. Stimpfl was dismissed for unauthorized removal of Corporation goods from meal service car Express, Train No. 2, on February 16, 1986.

The Brotherhood appealed the dismissal on the basis that the grievor had been apologetic and remorseful for committing what he had termed as a foolish act.

The Brotherhood further contended that the grievor's actions were not intended to be an act of theft, and requested the substitution of some lesser penalty which would culminate in the grievor's reinstatement.

The Corporation denied the Brotherhood's request.

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

There appeared on behalf of the Corporation:

C. O. White	- Labour Relations Officer, VIA, H.Q.
M. St-Jules	- Manager, Labour Relations, VIA, H.Q.
J. Kish	- Officer, Personnel & Labour Relations, VIA,H.Q.
E. Sinneker	- Supervisor, Sales & Services, O.B.S., VIA West

And on behalf of the Brotherhood:

J.A. Craig	- Regional Vice-President, CBRT&GW, Vancouver
J. Stimpfl	- Grievor
T.N. Stol	- Regional Vice-President, CBRT&GW, Toronto

AWARD OF THE ARBITRATOR

The evidence establishes that the grievor was assigned as Dining Car Steward on a train number 2 bound from Vancouver to Winnipeg on February 16, 1986. Because of a bomb scare the train was delayed for some three hours at Port Coquitlam, which is the grievor's home town. The eighty passengers aboard were forced to leave the train, and because of the relatively small size of the Coquitlam station, some fifty of them were forced to stand outside in cold weather.

Because there were no stores or restaurants near at hand, the train crew were at a loss to provide services of any kind to comfort the passengers during their wait. One of the grievor's supervisors asked him whether, as a local resident, he had any ideas. He did. Mr. Stimpfl telephoned his wife at home, asking her to come with the family car so that he might use it to get hot coffee and refreshments for the passengers.

This was done. The evidence establishes that for about one and a half hours the grievor, his wife and son, neither of whom is an employee of the Corporation, voluntarily made three trips between the Coquitlam station and a local convenience store, returning with hot coffee, tea and soft drinks which they served to the passengers. The refreshments were paid for by the Corporation, upon the authorization of Mr. Billington, the grievor's supervisor. The grievor's wife and son were not paid for their efforts, nor does it appear that Mr. Stimpfl sought any such reward or claimed any mileage expenses for his vehicle. The entire operation was plainly a voluntary gesture on the part of the grievor, with the freely given assistance of his family.

When the bomb scare had ended and the passengers were reboarding the train, the dining car crew were ordered to provide a free meal for the passengers. A substantial quantity of food was brought to the dining car as a result of that directive. As preparations were being made, Mr. Stimpfl noticed two pies lying on the floor in a passage way between the kitchen and pantry. It appeared to him that they had fallen and would have to be condemned. He also noticed a small piece of spoiled ham which had been condemned and placed in a trash bin. On the spur of the moment, as the train was about to leave, he gave the pies to his son, along with a cold drink purchased earlier from the confectionary, along with the piece of ham to take home for the family dog. According to the grievor's evidence, which I accept, he did this in the context of the unusual surrounding event and in consideration of his son's help in assisting the passengers during the bomb threat.

The Arbitrator accepts the position of the Company that theft is, prima facie, grounds for the termination of an employee, because it strikes at the root of the bond of trust that underlies any employment relationship. Each case must be considered on its own merits, however, In the instant case the Arbitrator has some difficulty accepting the Corporation's characterization of the grievor's favor to his son as constituting theft justifying the discharge of an employee of some twenty-three years.

It is not disputed that Mr. Stimpfl should have obtained the authorization of the Service Manager on the train prior to disposing of any goods belonging to the Corporation, condemned or otherwise.

His failure to do so was plainly a failure to meet a serious obligation to his employer that he knows to be strictly enforced. By the same token, however, the evidence confirms that the grievor's action was a spur of the moment gesture which, as the Union submits, may more fairly be described as an indiscretion or an error in judgement than as the act of a calculating thief who can be no longer trusted by his employer. The evidence establishes that the grievor has for years faithfully discharged his responsibilities, including the handling of substantial sums of money in dining car operations, without any question being raised as to his honesty or integrity.

On a careful review of the evidence in this case, given the grievor's length of service, his past record, the relatively low value of the goods involved, estimated at no more than twelve dollars, and, perhaps most importantly, that his actions were more in the nature of a compulsive error of judgement rather than theft, I am satified that discharge is an inappropriate measure of discipline. While the grievor's generosity, and that of his family, in assisting the Corporation and its passengers, without reward, in a situation of hardship does not justify his actions, it does constitute a significant mitigating factor. While I fully appreciate the Corporation's concern for any act of misappropriation by an employee, on the whole I am persuaded that in this instance the Corporation has also displayed an error of judgement. It is therefore appropriate that Mr. Stimpfl be reinstated, with compensation for wages and benefits lost for one half of the period since his termination, the other half to be treated as a suspension, and I so order.

I retain jurisdiction in the event of any dispute in respect of the interpretation or implementation of this decision.

MICHEL G. PICHER,
ARBITRATOR.