

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2069

Heard at Montreal, Tuesday, 13 November 1990

Concerning

VIA RAIL CANADA INC.

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The Corporation's refusal to count time "off for miles" in determining the 12 months of compensated service for the removal of discipline.

JOINT STATEMENT OF ISSUE:

On March 10, 1988, Mr. S.B. Smith of Vancouver, B.C., was assessed 20 demerit marks for a U.C.O.R. violation.

On October 28, 1988, Mr. Smith was removed from service for a total of 75 calendar days, i.e., until January 10, 1989, as provided for in Article 64.16.

The Corporation delayed the removal of up to 20 demerit marks from his discipline record by two months, from March 10, 1989 until May 10, 1989.

It is the Brotherhood's position that time "off for miles" has no bearing on the Corporation's discipline policy requirements.

It is the Corporation's position that this matter is not arbitrable.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD) D. S. KIPP  
GENERAL CHAIRMAN

(SGD) C. C. MUGGERIDGE  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor	-- Senior Labour Relations Officer, Montreal
C. Plante	-- Observer

And on behalf of the Brotherhood:

D. S. Kipp	-- General Chairman, Kamloops
G. Hall,	-- General Chairman, Quebec
J. D. Pickle	-- General Chairman, Sarnia
G. N. Wynne	-- General Chairman, CP Lines East,

	Smiths Falls -- Observer
T. G. Hucker	-- General Chairman, CP Lines West, Calgary -- Observer
J. P. Beauregard	-- Senior Vice-Chairman, CP Lines East, North Bay -- Observer
A. Bourgeois	-- Local Chairman, CP Lines East, Montreal -- Observer
S. O'Donnell	-- Vice-Local Chairman, ONR, North Bay -- Observer
M. Kenney	-- Local Chairman, ONR, North Bay -- Observer

#### PRELIMINARY AWARD OF THE ARBITRATOR

On the basis of the material presented, the Arbitrator is satisfied that the dispute between the parties concerns the present status of the disciplinary record of the grievor. It is the Brotherhood's position that he should have been forgiven disciplinary demerits, without any reduction of his right or privilege in that regard by reason of his time "off for miles", while the Corporation takes a contrary position.

It is a fundamental principle of progressive discipline, and indeed of the Brown System, that an employee should at all times have a clear understanding of his or her disciplinary standing in respect of the accumulation of demerits. That, in the Arbitrator's view, is an issue intrinsically related to the interpretation and application of the terms of the Collective Agreement governing the right of the employer to assess discipline for just cause within the contemplation of Article 71 of the Collective Agreement. The jurisdiction of the Arbitrator under the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration extends to "... any claims ... that an employee has been unjustly disciplined". Seen in that context, the instant dispute must be viewed as arbitrable. The removal of discipline is arguably as much a part of its just application as is its imposition. Without commenting on the merits of the dispute, the Brotherhood is entitled to submit to arbitration a dispute which concerns a claim that an employee has been subjected to discipline of a severity or a duration in time that is either inconsistent with the just cause provisions of the Collective Agreement or is discriminatory as regards the treatment of other employees. This is such a case.

For the foregoing reasons the Arbitrator finds that the grievance is arbitrable. Accordingly, it shall be docketed to be heard on its merits.

November 16, 1990

(Sgd.) MICHEL G. PICHER  
ARBITRATOR