

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2337

Heard at Montreal, Wednesday, 10 March 1993

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The assessment of discipline to Mr. L. Crowe.

JOINT STATEMENT OF ISSUE:

On September 1, 1992, following an investigation, Mr. L. Crowe was discharged by the Corporation for gross misconduct.

The Corporation alleges that Mr. Crowe willfully spit into a cup of coffee destined for another employee, on board VIA Train #72 on August 13, 1992. The Corporation believes that such an odious and reprehensible act is clearly a total breach of the Corporation's and society's trust and that discharge was not an excessive response in these circumstances.

The Brotherhood contends that there was a misunderstanding and that Mr. Crowe did not deliberately spit but may have sneezed. In the alternative, if Mr. Crowe did spit, then the Brotherhood believes that the discipline assessed was too severe. The Brotherhood requests that Mr. Crowe be reinstated with full seniority and paid any lost wages or benefits from the time he was dismissed.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) T. N. STOL

(SGD.) C. C. MUGGERIDGE

NATIONAL VICE-PRESIDENT

DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. S. Fisher

Senior Negotiator & Advisor, Labour Relations, Montreal

C. Pollock

Senior Labour Relations Officer, Montreal

J. R. Kish

Senior Advisor, Labour Relations, Montreal

E. A. Williams

Witness

And on behalf of the Brotherhood:

M. Lesperance

Representative, Toronto

H. Henry

Local Chairman, Toronto

L. Crowe

Grievor

AWARD OF THE ARBITRATOR

The facts in the case at hand must be resolved on the basis of the credibility of the grievor, and employee E.A. Williams. Mr. Williams, a Senior Service Attendant, testified that he witnessed the grievor spit into a cup of coffee which he had asked Mr. Crowe to prepare for the train's conductor. Mr. Crowe denies having done so. In the Arbitrator's view the evidence of Mr. Williams is to be preferred. While Mr. Crowe sought to raise "rumours" and past incidents which he says would have prompted Mr. Williams to falsify his evidence, I can see no substance to those suggestions. Mr. Williams strikes the Arbitrator as a honest and candid witness, who experienced revulsion at what he saw and agonized for a day before deciding to report Mr. Crowe to the Corporation. It is conceded, on the other hand, that the conductor for whom the cup of coffee was intended had previously reported Mr. Crowe for sleeping on the job, as a result of which he was disciplined.

I must agree with Mr. Williams' characterization of the grievor's actions as "... below human dignity." In light of the conclusion that the grievor has further sought to mislead both the Corporation and the Arbitrator, there is little reason to mitigate the penalty of discharge assessed by the Corporation. Obvious concerns about the willingness of other employees to work with the grievor in light of his conduct militate compellingly against his reinstatement.

For the foregoing reasons the grievance is dismissed.

March 12, 1993

(Sgd.) MICHEL G. PICHER

ARBITRATOR