

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 2378

Heard at Montreal, Tuesday, 13 July 1993

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

DISPUTE:

The assessment of ten demerit marks to Mr. M.F. Smith for failure to follow deadheading instructions on December 4, 1990.

JOINT STATEMENT OF ISSUE

On December 3, 1990, Mr. M.F. Smith was the Assistant Conductor on Train 81 operating from Toronto to Port Huron.

Upon arrival at Port Huron, he booked eight hours rest in accordance with the Rest provisions in the collective agreement.

He was instructed at that time to deadhead back to Toronto on Train 88, departing Port Huron December 4, 1990.

Mr. Smith did not deadhead on Train 88, but instead deadheaded on Train 80.

On January 18, 1991, he attended an investigation into this matter and was subsequently assessed ten demerit marks.

It is the Union's position that the discipline assessed was too severe, if not unwarranted.

It is the Corporation's position that the discipline is appropriate.

FOR THE UNION:FOR THE CORPORATION:

(SGD.) M. P. GREGOTSKI (SGD.) C. C. MUGGERIDGE

GENERAL CHAIRMANDEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. W. Taylor - Senior Negotiator & Advisor, Labour Relations, Montreal

D. A. Watson - Senior Labour Relations Officer, Montreal

There appeared on behalf of the Union:

G. Binsfeld - Secretary/Treasurer, GCA, Fort Erie

M. P. Gregotski- General Chairperson, Fort Erie

M. F. Smith - Grievor

## AWARD OF THE ARBITRATOR

The Arbitrator can see no basis upon which to sustain the grievance. It is common ground that Mr. Smith deadheaded on Train 80, rather than on Train 88, as he was scheduled to do. This he did without authorization and, I am satisfied, without any contrary indication from his conductor that he had authority to do so. In coming to that conclusion the Arbitrator gives some weight to the submission of the Corporation that Mr. Smith's previous record, particularly in respect of time keeping, leaves much to be desired.

The Arbitrator can understand the Corporation's frustration with what appears the tendency of Mr. Smith to cast responsibility for his conduct on others, in this case his conductor. The grievor must understand that he and he alone remains accountable for his actions. Moreover, there is nothing in the evidence to suggest that he was misled by anyone. If he strayed into a violation of proper procedure, it was solely because of his own laxity.

In the circumstances the Arbitrator is satisfied that the assessment of ten demerits is appropriate, and the grievance is accordingly dismissed.

July 16, 1993 MICHEL G. PICHER  
ARBITRATOR