

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2433

Heard in Montreal, Thursday, 16 December 1993  
concerning  
VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:

The assessment of discipline to Ms. L. Dowhanik.

JOINT STATEMENT OF ISSUE:

Following an investigation held in accordance with Article 24 of Collective Agreement No. 1, Ms. Dowhanik was assessed a written reprimand for performing union work on Company time and 10 demerit marks for unauthorized use of confidential information.

The Brotherhood objects and believes that the discipline was unjustly assessed.

The Corporation believes that the discipline was deserved and was not excessive in the circumstances.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL

NATIONAL VICE-PRESIDENT

RELATIONS

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE

DEPARTMENT DIRECTOR, LABOUR

There appeared on behalf of the Corporation:

C. Rouleau - Senior Officer, Labour Relations, Montreal  
C. Pollock - Senior Officer, Labour Relations, Montreal  
D. Fisher - Senior Negotiator & Advisor, Labour

Relations, Montreal

A. Houde - Advisor, Performance Management Programs,  
Montreal

D. Depelteau - Officer, Procedures & Human Resources  
Services, Montreal

And on behalf of the Brotherhood:

A. Wepruk - Regional Vice-President, Montreal  
J. Brown - Representative, Montreal  
F. Bisson - Local Chairperson, Montreal  
L. A. Dowhanik - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator does not establish, on the balance of probabilities, that Ms. Dowhanik performed union work on company time. According to her own explanation, she is entitled to a forty-five minute lunch break, but may take it at such time as is convenient. I am satisfied, on the balance of probabilities, that the work which she performed during her lunch period was not in violation of any obligation to the Corporation. I am also satisfied that any use which she subsequently made of the Corporation's printer, apparently later in the afternoon, was minor in nature and should not attract a reprimand.

Different considerations attach, however, to the issue of the

ten demerits for unauthorized use of confidential information. In respect of this issue I am satisfied that the Corporation's position is correct. The evidence discloses that Ms. Dowhanik obtained and communicated information in respect of several employees, including confidential information such as their social insurance number, for the purposes of the union, in furtherance of her position as Financial Secretary-Treasurer of Local 301 of the Brotherhood. It did constitute an abuse of her access to such information for the grievor to withdraw it from the Corporation's computer system without any authorization, solely for the purposes of her union.

The issue then becomes the appropriate quantum of penalty. At the hearing it was evident that the grievor did not believe that she was committing a wrong, and that she still fails to see the conflict of interest involved in her actions. In my view, given her continuing inability to appreciate that she abused her position, I can see no justification for a reduction of the penalty. The Arbitrator therefore directs that the reprimand be removed from the grievor's record, with the ten demerits to remain undisturbed.

17 December 1993\_\_\_\_\_

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MICHEL G. PICHER  
ARBITRATOR