CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2503

Heard in Montreal, Tuesday, 12 July 1994
concerning
VIA RAIL CANADA INC.

and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:
The dismissal of Mr. D. Bourque.

JOINT STATEMENT OF ISSUE:

Following an investigation on January 21, 1994, into the grievor's lateness and absences from November 22, 1993 to January 18, 1994, the grievor was assessed twenty (20) demerit marks, resulting in his dismissal for accumulation of seventy-five demerit marks.

The Brotherhood contends that the grievor should not have been dismissed because, on several occasions, he had been under a doctor's care. Furthermore, that the grievor had been referred to a psychologist on January 25, 1994, who claimed that the grievor suffered problems since December 1993. Therefore, the Brotherhood believes that the lateness and absences were due to the medical condition.

The Brotherhood further contends that the Corporation is not consistent in its application of progressive discipline, in that, on several occasions, employees standing at fifty-five (55) demerit marks have been assessed a suspension, in order to avoid bringing them to sixty (60) demerit marks, resulting in automatic dismissal.

The Corporation declined the grievance in that the grievor had been assessed a suspension in lieu of discipline in the past. Furthermore, Mr. Bourque had ample opportunity to provide the Corporation with medical evidence to support his absences prior to being discharged on January 31, 1994, but failed to do so. The Corporation believes the discipline was warranted and not excessive in the circumstances.

FOR THE BROTHERHOOD: FOR THE CORPORATION:
(SGD.) T. N. STOL (SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT DEPARTMENT DIRECTOR, LABOUR RELATIONS
& HUMAN RESOURCES SERVICES

There appeared on behalf of the Corporation:
D. Fisher – Senior Negotiator & Advisor, Labour Relations, Montreal
M. Boulanger – Witness
M. Olingy – Witness
And on behalf of the Brotherhood:
F. Bisson – Local Chairman, CAW, Montreal
A. Wepruk – National Coordinator, CAW, Montreal
D. Bourque – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, without disupte, that the attendance record and timekeeping of Mr. Bourque during the period which is the subject of this grievance was clearly unacceptable. By the grievor's own admission his overall attendance and timekeeping record over the years is "flagrant". Mr. Bourque had been previously counselled and disciplined on numerous occasions for being absent or late or taking extended breaks.

The evidence discloses that the Corporation has adhered to principles of progressive discipline in dealing with Mr. Bourque's absenteeism problems over the years. The chain of discipline culminated in a two week suspension assessed against Mr. Bourque in November of 1993. The two week suspension was then assessed because Mr. Bourque's disciplinary record stood at fifty-five demerits, and the assessment of even five demerits would have resulted in his dismissal. Notwithstanding that unenviable background, the grievor's attendance and lateness problems continued in the period between November 22, 1993 and January 18, 1994, during which time nine instances of absences and timekeeping problems were recorded.

In the Arbitrator's view the case of Mr. Bourque presents itself as one of a pronounced pattern of both innocent and culpable absenteeism. His record of some nine years' employment clearly reveals an inability to be regular in his attendance at work, to a degree which clearly is disruptive and impacts on productivity. Given the extent of Mr. Bourque's prior record, and his failure to respond to prior discipline and counselling, the Corporation was, in my view, entitled to draw the inference that absent compelling evidence, there is little reason to expect that his attendance will be substantially better in the future.

At the hearing Mr. Bourque sought to explain the events leading to his discharge in light of stress he was suffering as a result of personal and financial difficulties. He also tabled in evidence a brief medical certificate which reflects a single visit to a psychiatrist in February of 1994. That document reflects a diagnosis that he was in a depressive state and should remain off work for a period of some three months. According to Mr. Bourque's own account, he has had no follow-up medical treatment, although he feels that his personal and financial problems are now behind him.

Regrettably, the Arbitrator does not find the case presented by the grievor to be compelling. As the record discloses, the Corporation has been extremely patient in dealing with his extraordinary rate of absenteeism and lateness over the years. As the jurisprudence reflects, in a circumstance such as this, where the record gives grounds to draw the inference that there will be no improvement in the future, the burden falls naturally to the employee to provide medical or other evidence which provides a sound basis for concluding that an individual's attendance problems will not continue into the future. In the case at hand, other than the grievor's own expressed hopes, there is no significant evidence to substantiate such a prognosis. In the Arbitrator's view the case at hand falls within the principles generally discussed in prior awards of this Office (see CROA 1924, 2002, and 2233).

In the result, the Arbitrator is satisfied that the

Corporation was correct in its decision to asses demerits against Mr. Bourque for his failure to respond to progressive discipline in relation to his absenteeism. While, as noted above, the case can be characterized as one of innocent absenteeism, it is clear from Mr. Bourque's own admission that the problem is in large part behavioural and, as he put it, was entirely his own fault. In light of the evidence, the Arbitrator can see no basis to reverse the decision of the Corporation, or to justify the substitution of a lesser penalty.

For the foregoing reasons the grievance must be dismissed.

15 July 1994 (sgd.) MICHEL G. PICHER
ARBITRATOR