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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2577

Heard in Montreal, Thursday, 12 January 1995

concerning

VIA Rail Canada Inc.

and

United Transportation Union

ex parte

DISPUTE:

Appeal of discipline assessed the record of Assistant Conductor B.T. Mann of Hornepayne.

Ex parte STATEMENT OF ISSUE:

On October 17, 1993 Assistant Conductor Mann was called to operate VIA Train #1 Hornepayne to Sioux Lookout. Due to operational difficulties which resulted in the delay to Train #1 on this date, Mr. Mann refused to proceed past Savant Lake Station enroute to Sioux Lookout because of the Hours of Service Regulations established by Transport Canada which prohibits employees from working more than 12 hours.

A officer of the Corporation was contacted by CN Rail, this officer directed Mr. Mann to proceed to Sioux Lookout regardless of the Hours of Service Regulations.

Mr. Mann refused to follow the supervisor's instructions and he was subsequently required to attend a formal employee statement. Mr. Mann was then assessed 30 demerits for "failure to follow a supervisor's instructions resulting in delay to Train #1 on October 17, 1993 thus inconveniencing 172 passengers unnecessarily."

The Union appealed the assessment of discipline assessed Mr. Mann on the grounds that Mr. Mann was subject to the Hours of Service Regulations and therefore was prohibited from following the directions of his supervisor. In addition, the Union appealed the discipline assessed against Mr. Mann on the grounds that the Corporation violated the provisions of article 73.1 of agreement 12 because Mr. Mann did not receive a fair and impartial investigation.

The Corporation declined the Union's appeal

FOR THE UNION:

(SGD.) M. P. Gregotski

General Chairman

There appeared on behalf of the Corporation:

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

Wm.. Radcliffe - Transportation Officer, Customer Services, Corridor West, Toronto

And on behalf of the Union:

R. Beatty - Vice-General Chairperson, Hornepayne

M. P. Gregotski - General Chairperson, Fort Erie

W. G. Scarrow - General Chairperson, Sarnia

R. Roy - Local Chairperson, Capreol

R. Whoel - Local Chairman, CCROU(BLE), Hornepayne

B. Mann- Grievor

AWARD OF THE ARBITRATOR

The facts of the instant case are related in CROA 2576. It is

common ground that all of the facts, including the treatment of Mr. Mann in respect of the disciplinary investigation, are identical to those in the case of Conductor Milks. For the reasons related in CROA 2576 the instant grievance is therefore allowed. The Corporation is directed to remove the thirty demerits assessed against the grievor forthwith.

13 January 1995 _____

MICHEL G. PICHER
ARBITRATOR