

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3015

Heard in Montreal, Thursday, 10 December 1998

concerning

VIA RAIL CANADA INC.

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The assessment of discipline to Mr. Arden Osborne.

JOINT STATEMENT OF ISSUE:

On Thursday, June 12, 1998, the Corporation held an investigation statement with Mr. Arden Osborne for alleged failure to protect his assignment on the aforementioned dates. The Corporation subsequently assessed the grievor 15 demerit marks for failing to protect his assignment on April 28 and May 28, 1987.

It is the Union's position that the Corporation delayed in holding the investigation and based on the delay the investigation was not fair and impartial and was not held as "quickly as possible" in accordance with articles 24.1 and 24.2 of collective agreement no. 1. It is further the Union's position that the absences were mitigated by illness and that the grievor made reasonable attempts to notify the employer of his absence. The Union alleges the grievor was treated unfairly and that the discipline was excessive in the circumstances. The Union requests the discipline be expunged from the grievor's record.

The Corporation maintains that there has been no violation of the collective agreement and has denied the Union's request.

FOR THE UNION:
(SGD.) **R. JOHNSTON**
PRESIDENT

FOR THE CORPORATION:
(SGD.) **E. J. HOULIHAN**
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

E. J. Houlihan - Senior Manager, Labour Relations, Montreal
C. Pollock - Senior Officer, Labour Relations, Montreal
L. Laplante - Officer, Labour Relations, Montreal

And on behalf of the Union:

D. Olszewski - National Representative, Winnipeg
R. Bir - Regional Representative

A. Osborne

- Grievor

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied that the grievor did render himself liable to discipline for his failure to attend at work on April 28 and May 26, 1997. On neither occasion did he contact his employer in advance to indicate that he would be unavailable for work. While he maintains that he did call the Edmonton ticket office at approximately 7:15 a.m. on the morning of April 28, 1997, and received no answer, in the Arbitrator's view that is simply not responsive to his duty in the circumstances. It appears that he did not continue to attempt to call, and that in fact he went back to bed and was awakened from his sleep by a telephone call from his supervisor after the commencement of his tour of duty. Further, the grievor admits that he made no attempt to call his supervisor on the 26th of May, 1997.

The record reveals that Mr. Osborne has previously been disciplined for his failure to protect his work assignment, on more than one occasion. In the circumstances I am satisfied that the assessment of fifteen demerits was justified as a measure of discipline.

The Arbitrator cannot sustain the allegation of the Union that the grievor was denied a fair and impartial investigation, or that there was unreasonable delay in this matter. The investigation, held on June 12, 1997 related to two previous timekeeping incidents, for April 28 and May 26, 1998. In the circumstances the Corporation was justified, I think, in looking at the pattern of conduct falling within that time period, and investigating. Nor do I view as irregular the fact that the grievor's Manager Customer Services, Mr. McIlhone, who initially spoke to the grievor on his failure to properly call the employer on April 28 also conducted the disciplinary investigation. This is not a circumstance where the investigating officer was in the position of being a witness providing evidence contrary to the evidence of the employee concerned. There was, on the face of the process, no bias or reasonable apprehension of bias on the part of the Corporation's officer. The purpose of the investigation, in keeping with article 24 of the collective agreement, was to allow the Corporation to obtain the facts pertinent to what it perceived as an unacceptable pattern of absenteeism, and a failure to call in when the grievor was absent, and to give him a reasonable opportunity to offer his explanation. There was, in the circumstances, no departure from the provisions of article 24 of the collective agreement.

The grievance must therefore be dismissed.

December 14, 1998

MICHEL G. PICHER
ARBITRATOR