

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3176

Heard in Montreal, Thursday, December 14, 2000

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Remove the 90 day suspension and discipline assessed to Locomotive Engineer Wilkinson.

EX PARTE STATEMENT OF ISSUE:

On April 16th, 2000 Locomotive Engineer Wilkinson was regularly assigned to train 68588 between Toronto and Port Huron.

He received a telephone call from the CIVIC prior to leaving for work asking him to work layover train #60 to Montreal to which he advised the officer he could not manage to do. Consequently, he was left on his regular assignment.

When he arrived for work he was told by another manager that he was going to Montreal on train 60. Mr. Wilkinson was not successful in his efforts to communicate his reasons for not being prepared to go on the layover assignment and was removed from service.

There was another turnaround assignment open that day requiring an engineer which was not offered to Mr. Wilkinson. He was never advised that his own assignment was cancelled.

Mr. Wilkinson was prejudiced by local management prior to his hearing following which he was suspended for 90 days and required to undergo "cognitive behavioural therapy for anger management."

The Brotherhood appealed the discipline contending that Mr. Wilkinson should not have been suspended. The Corporation did not respond to the appeal.

FOR THE BROTHERHOOD:

ISGID.) J. R. TOFFLEMIRE

GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. HOulihan	- Senior Manager, Labour Relations, Montreal
C. Harnish	- Manager, Customer Services, Montreal
D. Trubiano	- Labour Relations Officer, Montreal
M. Bastien	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. R. Tofflemire                    - General Chairman, Oakville  
M. Wilkinson                    - Grievor

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that the grievor did decline to work train 60 to Montreal when asked to do so on April 16, 2000. That assignment represented a change from the grievor's normal work, which would have involved him handling train 685 to Port Huron, in turnaround service the same day. It is common ground that Mr. Wilkinson did not wish to take the Montreal assignment, as it involved an out-of-town layover, returning only on the following day.

At the arbitration hearing Mr. Wilkinson explained that he refused to perform the Montreal assignment because of a personal obligation involving attendance at an important school meeting the following morning with one of his children. Unfortunately the specifics of that urgency were not communicated to the Corporation at the time of the disciplinary investigation. In the Arbitrator's view it was, at a minimum, incumbent upon the grievor to come forth with the explanation of urgency which emerged in detail only at the arbitration hearing. Additionally, it is not clear to the Arbitrator that the meeting could not have been rescheduled.

The Arbitrator is nevertheless satisfied that the grievor's personal circumstances did involve a mitigating factor which can be properly weighed in the assessment of the penalty which is appropriate in the circumstances. A ninety day suspension is, on its face, an extremely heavy measure of discipline, albeit a suspension was justified. That is particularly so as the grievor was, on one prior occasion assessed demerits for refusing to perform an assignment. In all of the circumstances I am satisfied that the assessment of a forty-five day suspension would have been sufficient to convey to Mr. Wilkinson the importance of following work directives, or alternatively of being forthcoming with a clear explanation as to why he should not "work now - grieve later" when requested to perform an emergency assignment by his supervisors.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor's record be amended to reflect a forty-five day suspension for the incident of April 16, 2000. Mr. Wilkinson shall be compensated for one-half the wages and benefits which he lost.

December 15, 2000

MICHEL G. PICHER  
ARBITRATOR