

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 978

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

VIA RAIL CANADA INC.

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

The assessment of twenty demerit marks to Steward-Waiter L.G. Kiley, Montreal, Quebec, for conduct unbecoming a VIA employee and using profane language towards Supervisors.

JOINT STATEMENT OF ISSUE:

On January 13, 1982, the grievor went to the On-Board Services Supervisors' office for some information and asked to speak to Supervisor J. Durant or Assistant Supervisor N. Bertrand.

The Corporation contends that when the grievor was informed by Office Assistant P. Laporte that the two supervisors were not readily available, he became abusive and used profane language.

The Brotherhood denies this contention and requests that the twenty demerit marks be rescinded.

The Corporation rejects the Brotherhood's request.

FOR THE EMPLOYEE:

(SGD.) J. D. HUNTER
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. D. ANDREW
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

Andre Leger	– Labour Relations Officer, Montreal
J. De Cotret	– O.B.S. Officer, Montreal
D. Fenton	– Human Resources Assistant, Montreal
F. Laframboise	– Witness
N. Bertrand	– Witness
P. Laporte	– Witness
J. Sweeney	– Witness

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
I. Quinn	– Representative, Montreal
L. Kiley	– Grievor

AWARD OF THE ARBITRATOR

This case turns solely on the nature of the grievor's conduct and speech in the On-Board Services Supervisors' Office on the day in question.

The grievor went by the office in the early afternoon, on his way to a safety meeting. He was not on duty at the time, but was in the course of carrying out certain functions as Local Chairman, seeking information as to a certain train which would be helpful to another employee. As well, he was concerned about one of his own assignments.

According to the statement of Mr. Laporte, the Office Assistant (a Representative of Management), the grievor was given the information about the train. He enquired then for Mr. Durant, the Supervisor, or Mr. Bertrand, his Assistant. On being advised they were not there, he asked who was in charge, and being told it was Mr. Laporte, replied with various obscene expressions.

It was the grievor's evidence that Mr. Laporte did not reply to his questions, but said "What business is it of yours?" and "why the fuck do you want to know?". While I do not consider that this is accurate, even if it were it is not the same as directly addressing obscene language towards another person. The distinction is well known. Obscenities may often be used in everyday working life, but they are not so frequently addressed to others, and especially not to Supervisors (nor by Supervisors to Employees). At least, where such behaviour occurs, it may be the subject of discipline.

Leaving the office, the grievor met Mr. Bertrand, returning from lunch. The grievor, as I find, addressed further obscene language to him.

From all of the evidence, I have no doubt that the grievor did, without cause or provocation, address obscene language to the Supervisors. That is an offence for which discipline may be imposed, and in the circumstances I do not consider that twenty demerits was excessive. The grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR