

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1209

Heard at Montreal, Wednesday, March 7, 1984

Concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed Bus Operator T. Casey.

JOINT STATEMENT OF ISSUE:

Bus Operator T. Casey was assessed 30 demerit marks for:

"Refusal to transport a ticketed passenger between Hearst and Kapuskasing, Bus Trip #24, July 13, 1983, causing grief and anxiety to the passenger and resulting in an expense of \$70.00 to the railway."

The union appealed that the 30 demerit marks were unwarranted and requested that they be withdrawn. The Company did not agree.

FOR THE UNION:

(SGD.) B. F. NEWMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) P. A. DYMENT
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay
J. H. Singleton – Manager Passenger Services, North Bay

And on behalf of the Union:

B. F. Newman – General Chairman, North Bay
R. Poulin – 2nd Vice-Chairman, Timmins
R. Proulx – Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Two passengers, an elderly woman and her daughter, sought to board an Ontario Northland bus at Hearst, Ontario, in order to complete their voyage, originating in Thunder Bay, to Kapaskasing. The elderly woman had drunk some coffee prior to boarding the bus.

The grievor observed the elderly woman regurgitate a liquid substance which he diagnosed to be vomit. He concluded that the woman was not in a fit condition to travel and refused her access to the bus. The woman insisted that she was well enough to travel. Nonetheless, the grievor refused to allow her to board the bus. As a result both woman and daughter were compelled to take a taxi to Kapaskasing at great expense to them. The Company has since reimbursed them their costs.

The Company has imposed 30 demerit marks on the grievor owing to his treatment of the situation. In the one instance the Company asserts that the grievor was without authority under the Company's operating rules to deny access to the passenger in the circumstances described; and, in the other, it was submitted that the grievor was duty bound to treat the passengers involved with greater courtesy.

The relevant rule of the "Bus Operators' General Rules and Instructions" reads as follows:

- (a) Having in their possession explosives or inflammable materials or articles or substances of an objectionable nature, or who are under the influence of liquor or drugs, or who are incapable of taking care of themselves, or whose conduct is objectionable to passengers or prospective passengers. In such cases where a ticket has been purchased same will be redeemed as provided in tariff.

I do not agree with the Company's assertion that the existing rule does not cover the circumstance with which the grievor was confronted. The grievor concluded, perhaps incorrectly, that the passenger was too sick to undertake the trip in question owing to his observations of her regurgitating some food or liquid. It appears, however, that the phrase in the operating rules enabling bus operators to refuse access to their vehicles passengers who are sick is covered by the words "who are incapable of taking care of themselves". It may very well be that the grievor may have misjudged the situation having regard to the information received by the Company during the course of its investigation. Nonetheless, based on the grievor's observations of the passenger at the time in question, he may very well have concluded that the passenger's well being (as well as the passengers admitted on to the bus) would best be served by refusing access to the passenger and her daughter.

Nothing that is stated herein would excuse, however, the grievor from being rude and discourteous towards the passengers in question. Indeed, I am satisfied that when the passengers resisted the grievor's efforts to bar them access to the bus the tenor of the situation may very well have escalated. In this regard the grievor's manner of handling the situation as manifested by his leaving the passengers behind in Hearst with their baggage aboard the bus merited some censure on the employer's part. In short the situation did require both firmness and sensitivity on the grievor's part in his dealings with the passengers. This is clearly the case in a situation where the passengers in question are refused access due to reasons beyond their own control.

I am satisfied that a penalty of ten demerit marks would more appropriately reflect the Company's concern with respect to the grievor's misconduct yet still have taken into account the grievor's legitimate concern for the welfare of the passengers who may have been inconvenienced by the perceived sickness of the passenger in question.

For all the foregoing reasons the grievor's penalty is reduced from thirty to ten demerit marks.

(signed) DAVID H. KATES
ARBITRATOR