

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1491

Heard at Montreal, Thursday, March 13, 1986

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### DISPUTE:

Appeal of discipline assessed the record of Conductor W.A. Weller of Toronto, effective 30 August 1985.

#### JOINT STATEMENT OF ISSUE:

On 23 May 1985, Mr. W.A. Weller was employed as conductor on VIA Passenger Train No. 669 operating Toronto to Stratford. Subsequent to that date a letter was received from a passenger concerning an incident which had occurred on Train No. 669 on 23 May 1985.

Following an investigation, the record of Conductor W.A. Weller was assessed the following discipline:

You are hereby restricted from passenger service for the following reasons. For failing to properly carry out your duties as a passenger conductor on Train 669, 23 May 1985, thereby causing embarrassment and inconvenience to passengers resulting in complaints to VIA Rail.

The Union appealed the discipline assessed Conductor W.A. Weller on the grounds that he was not afforded a fair and impartial hearing; the Company violated article 83.2 of agreement 4.16; the discipline was not warranted, and in any case, was too severe and the grievor is entitled to compensation for all time lost.

The Company declined the appeal.

#### **FOR THE UNION:**

**(SGD.) R. A. BENNETT**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) D. C. FRALEIGH**  
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

J. B. Bart                   – Labour Relations Officer, Montreal  
M. C. Darby                 – Coordinator Transportation, Montreal

And on behalf of the Union:

R. A. Bennett             – General Chairman, Toronto  
W. G. Scarrow           – General Chairman, Sarnia  
J. Morgan                 – General Chairman, Winnipeg  
L. Olson                  – Vice-General Chairman, Winnipeg  
P. Gallagher             – Local Chairman, Niagara Falls  
W. Weller                 – Grievor

## **AWARD OF THE ARBITRATOR**

The issue to be resolved in this case is whether the Company had just cause to “restrict” the grievor’s status to bid for the position of conductor on passenger trains operated by VIA Rail.

Before dealing with that issue it is important that I note two concessions made by the Employer during the course of the proceedings.

Pursuant to article 83.2 of the collective agreement the Employer recognized that when it had recourse to restricting the grievor’s status as a disciplinary measure the Company had to specify “the length of time such restriction was to be in effect”. Accordingly, in giving the grievor an indefinite or permanent demotion for his alleged misconduct at the time in question the Company has acknowledged that some “term” should have been attached to his restrictive status. In this case it suggested it ought to have been for a three month duration.

The second concession that was made by the Company pertained to the notion that in the operation of a train the authority of the conductor, provided he otherwise conducts himself appropriately, must hold paramount authority. A conductor cannot allow his authority to be diminished by recalcitrant passengers who refuse to submit to his direction. This should be the case, despite the allegedly trivial nature of the issue at hand, because in the event a serious episode should later arise, such as collision, passengers must know that the conductor’s authority is controlling.

This, of course, does not excuse a conductor from his obligation to deal with his train passengers with courtesy, tact and diplomacy. He must exhibit a deferential posture in his dealings with the public yet at the same time he must exude the confidence that his instructions are to be the last word.

Thus in the circumstances described in evidence Conductor Weller obviously became irritated or annoyed with a group of passengers who refused to remove themselves from a passenger rail car that had been designated as being out of service. Those passengers clearly felt comfortable in the positions they were in and were not about to move without some excuse for the change. It is at that juncture that Mr. Weller was required to exhibit the necessary public relations finesse in order to persuade the passengers to come around to his point of view. In the last analysis, Mr. Weller, despite the recalcitrance of the passengers, still was entitled to remain confident that his instruction as conductor were paramount.

In my view there was some indication in the written material before me that Mr. Weller was in a “bad mood” at the time and perhaps allowed the pressures of his position (as well as the provocative behavior of the passengers) to get the best of him. As a result he may have treated the situation in a more abusive manner than the circumstance called for. Accordingly he may very well have lost control of the situation in being too precipitate in summoning the assistance of the police. In that sense, it is my opinion that the Company may have had reason to censure him.

In short, in restricting the grievor’s entitlement to bid “permanently” for conductor’s positions on VIA passenger trains the Company has imposed an inordinately harsh penalty. Indeed, restriction of his status to bid was not an appropriate disciplinary response irrespective of its duration.

Quite simply, the grievor should have been censured for public relations shortcomings and because of his status as a conductor, should have been assessed a minimal rebuke of 5 demerit marks.

Because this type of disciplinary penalty would have been amenable to the informal investigation procedure contained in the collective agreement I shall defer making any comment with respect to the Trade Union’s challenges to the propriety of the disciplinary investigation that was carried out in the grievor’s case.

Accordingly, the grievor’s restricted status is to be expunged from his disciplinary record. The parties are directed to meet in order to determine any loss incurred by the grievor as a result of the Company’s unwarranted penalty.

In lieu of the imposed penalty the grievor’s record will show 5 demerit marks for the infraction he committed.

I shall remain seized for the purposes of implementation of any direction.

**(signed) DAVID H. KATES**  
**ARBITRATOR**