

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1556

Heard at Montreal, Tuesday, September 9, 1986

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Discipline assessed for conduct unbecoming a VIA employee, and not complying to porters' standard of service on Train 2/10, August 4, 1985.

JOINT STATEMENT OF ISSUE:

Following passengers' complaints, Mr. S. Khan's record was assessed 10 demerit marks.

The grievor has denied all the allegations against him and has submitted six letters of commendation from other passengers to support his claim.

The Brotherhood has appealed the discipline and contends that the Corporation is harassing Mr. Khan, while he was simply doing his job.

The Corporation has denied the Brotherhood's claim.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. GAGNE
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. O. White – Officer, Labour Relations, Montreal
M. St-Jules – Manager, Labour Relations, Montreal
C.A.B. Henery – Human Resources Officer, Toronto
J. Kish – Officer, Personnel & Labour Relations, Montreal

And on behalf of the Brotherhood:

T. N. Stol – Regional Vice-President, Toronto
J. J. Huggins – Local Chairperson, Toronto
S. Khan – Grievor

AWARD OF THE ARBITRATOR

In the Arbitrator's view there is nothing in the evidence to sustain the suggestion of the grievor, who is of East Asian origin, that the assessment of ten demerit marks against him for complaints respecting his service on train 2/10 on August 4, 1985, were the result of harassment or racial discrimination aimed at him. After a careful review of the material filed, as well as the grievor's own evidence, the Arbitrator cannot conclude on the balance of probabilities, that the complaints made against the grievor by two separate passengers were entirely without foundation. I must conclude that on the occasion in question the grievor showed an insufficient degree of consideration to the two female passengers, by the tone of his voice, the manner in which he opened the curtains of one passenger's berth and bumping the second passenger while taking down a mattress, without apology.

The Arbitrator rejects the grievor's evidence that the female passengers, who were both travelling with their young children, complained about the grievor only because on the evening prior he had refused their alleged request to let a gentleman with whom they had been drinking sleep in one of their berths. In light of the grievor's demeanour as a witness and the implausibility of the events as he relates them, I am not prepared to conclude that two passengers, both with small children who were not travelling together, deliberately conspired to lodge false complaints against Mr. Khan as he alleges. While the complaints filed were minor, they were, in the Arbitrator's view, justified, as was the imposition of ten demerit marks in the circumstances.

For these reasons the grievance is dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR