

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1701

Heard at Montreal, Wednesday, October 14, 1987

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

Discipline assessed to L. Cologiacomo for conduct unbecoming a VIA employee, and physical aggression to a fellow employee.

JOINT STATEMENT OF ISSUE:

Following an investigation held on April 14, 1986 relative to the above charges, the grievor's record was assessed 30 demerit marks. The discipline, when added to the 45 demerit marks previously assessed, resulted in the grievor's dismissal for accumulation of demerit marks.

The Brotherhood contends that the grievor was discriminated against and requested the substitution of a lesser penalty.

The Corporation has denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD) T. MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

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

And for the Corporation:

C. O. White – Officer, Labour Relations, Montreal
C. Pollock – Officer, Labour Relations, Montreal
A. Deakin – Manager, Customer Service & Sales, Quebec

There appeared on behalf of the Brotherhood:

G. Côté – Regional Vice-President, Montreal
K. Cameron – Local Chairperson, Loc.335, Montreal
L.P. Rousseau – Recording Secretary, Loc. 335, Montreal
Y. Noel – Grievance Officer, Loc. 335, Montreal
L. Cologiacomo – Grievor

AWARD OF THE ARBITRATOR

The material establishes that the grievor, Luigi Cologiacomo verbally abused and assaulted two employees while off-duty in Toronto on March 14, 1986. The incidents in question occurred both inside and outside the Carlton Inn Hotel in Toronto shortly after the grievor and the employees in question had completed their tour of duty.

The Arbitrator has carefully reviewed the grievor's account of what transpired, as well as the written reports submitted by three fellow employees. It should be noted that the employees were present at the hearing and the Union did not seek to require their testimony or cross examination before the Arbitrator.

The evidence establishes that in October of 1985 On-Board Services employee Mario Bacon had a conversation with the grievor respecting the way Mr. Bacon made coffee for passenger service. It appears that Mr. Bacon explained that he used less than a full packet of coffee to make a single pot, apparently because he believed that the coffee would otherwise be too strong. This seems to have disturbed the grievor, who formed the belief that Mr. Bacon was trying unduly to gain favour in the eyes of the Corporation, perhaps at the expense of other employees like himself. According to Mr. Bacon's written account, which the Arbitrator accepts, Mr. Cologiacomo then made derisive comments, within the earshot of passengers and other employees to the effect that Mr. Bacon must be the best steward in all of Canada, being able to make two pots of coffee from a single packet.

It is clear that in the ensuing months the grievor continued to harbour a deep resentment against Mr. Bacon. This culminated in an ugly incident on March 14, 1986. Late that night, after the completion of his tour of duty, Mr. Bacon was sitting in a bar attached to the Carlton Inn Hotel in Toronto, having a social beer with two other On-Board Service employees, Suzanne Gamache and Maurice LeBlanc. Mr. Cologiacomo was in the same establishment, apparently having a beer in the company of other employees at the stand-up bar. The grievor approached Mr. Bacon's table on several occasions. Initially he expressed a sarcastic admiration for his fellow employee, apparently referring derisively to the coffee incident of the previous October. During one of these visits he accidentally spilled Mr. Bacon's beer, and then returned to the bar.

Still later he returned for one final visit to the table of the three employees. This time he was decidedly hostile. He stated to Mr. Bacon that he despised him, and that if he did not leave immediately he would punch him in the face. When Bacon replied that he was having a beer, and that he would leave when he had finished his beer and his conversation with Ms. Gamache, the grievor responded "We can solve that problem." He then took Mr. Bacon's glass of beer and poured it on the floor. The three employees then decided that it was best if they did leave, and proceeded outside the hotel bound for another hotel where they were to spend the night.

Mr. Cologiacomo followed Mr. Bacon onto the sidewalk outside the hotel and said to him "The next time I see you, I'll be sending you six feet underground." He then slapped Mr. Bacon twice, either in the face or on the back of the head, as the latter turned to try to avoid him. Mr. LeBlanc then spoke up, warning the grievor that there were witnesses present. At that point Mr. Cologiacomo turned and took a swing at Mr. LeBlanc, striking him a glancing blow to the side of his head. The incident ended there as the grievor returned to the bar and the three employees, clearly shaken by the incident, proceeded to their hotel.

During the course of the ensuing investigation the grievor denied virtually all of the forgoing facts, save that he did hate Mr. Bacon and made no secret of his feelings on the occasion in question. While he sought to explain his actions as caused by the effect of medication which he had been taking for an abscessed tooth, subsequent events leave serious doubt that what had occurred was an isolated incident which was out of character.

The statement of Mr. Bacon establishes that subsequently, on March 21st, one week later, he was again intimidated by Mr. Cologiacomo. On that date the two employees were assigned to the same train. While they were waiting at the station in Montreal for the train to be delivered, in front of other employees and passengers, the grievor again verbally attacked Mr. Bacon, stating that he despised even Mr. Bacon's moustache, that he should wear a wig and that both he (the grievor) and others would be better off if he did not exist. It also appears that on an earlier occasion, the precise date of which is not established, Mr. Cologiacomo greeted Mr. Bacon with the exclamation "Well, are you still alive?".

Boards of Arbitration have long recognized that the working place is not a tea party, and that momentary flare-ups may occur between fellow employees, both on and off the job. When an altercation between employees takes place off the job, and is apparently not linked to anything that is work-related, arbitrators may question the imposition of discipline, particularly where the interests of the employer are not affected. On the other hand, where

such conduct is job-related, and can be seen to impact negatively on the legitimate business interests of the employer, discipline may well be justified, depending on the circumstances of the particular incident. Plainly the threatening of a fellow employee in a way that threatens the peace of mind and well-being of that person in his job, and the physical acting out of such threats, is prejudicial to an employer's interests and will justify the imposition of serious disciplinary measures. (See, *Hitachi Sales Corp. of Canada Ltd.* (1981), 30 L.A.C. (2d) 1 (Frumkin); *City of Nanticoke* (1980), 29 L.A.C. (2d) 64 (Barton). *Kingsway Transports Ltd.* (1982), 4 L.A.C. (3d) 232 (Burkett); *Galco Food Products Ltd.* (1974), 7 L.A.C. (2d) 350 (Beatty); *Mattabi Mines Ltd.* (1973), 3 L.A.C. (2d) 344 (Abbott); *Liquid Carbonic Canada Ltd.* (1972), 24 L.A.C. 309 (Weiler); *Pedlar People Ltd.* (1972), 24 L.A.C. 277 (Hanrahan); *Canadian Food Products Sales Ltd.* (1966), 17 L.A.C. 137 (Hanrahan); *McCord Corp.* (1966), 17 L.A.C., 321 (Hanrahan); *Huron Steel Products Co. Ltd.* (1964), 15 L.A.C. 288 (Reville);).

What does the application of the foregoing principles mean in this case? The evidence confirms that for reasons best understood by himself, the grievor engaged in a sustained and long-standing vendetta against Mr. Bacon. On March 14, 1986 Mr. Cologiacomo allowed his feelings to run amok when he publicly harassed and assaulted both Mr. Bacon and Mr. LeBlanc. It appears, moreover, that that unpleasant incident did not satisfy the grievor's hostility. One week later, in Montreal, he continued his verbal harassment of Mr. Bacon. The Arbitrator accepts without reservation the latter's assertion that he continues to harbour a substantial fear for his own safety where Mr. Cologiacomo is concerned. Nor is that impression mitigated by the fact that the grievor tendered a written apology to Mr. Bacon. This occurred only after the grievor was advised of his discharge by the Corporation. In these circumstances, and particularly in light of the lack of candor exhibited by the grievor throughout the investigation, the Arbitrator is compelled to accept the Corporation's suggestion that the apology is more self-serving than genuine.

Nor does the grievor's prior record offer much in the way of mitigation. An employee of only six years seniority, within the period of less of two years prior to this culminating incident he was twice disciplined for being verbally abusive towards persons in authority. On a careful review of the evidence, given the deeply disturbing nature of the culminating incident, the Arbitrator can find no responsible basis for the reduction of the thirty demerits assessed against Mr. Cologiacomo. For the foregoing reasons the grievance must be dismissed.

(sgd.) MICHEL G. PICHER
ARBITRATOR