

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1868

Heard at Montreal, Wednesday, 11 January 1989

Concerning

**VIA RAIL CANADA INC.**

And

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

**EX PARTE**

### **DISPUTE:**

The assessment of ten demerit marks to the record of Mr. L. Grzesiowski, Toronto, for dereliction of duty and making obscene and threatening remarks to a Supervisor on September 4, 1985.

### **BROTHERHOOD'S STATEMENT OF ISSUE:**

The grievor was given an assignment by telephone to report to Union Station for an evening tidy assignment on Train 58 on September 5, 1986. The grievor requested and was granted permission to report directly to the Maintenance Centre.

The Corporation claims that upon arrival of Train 58 at Union Station from the Maintenance Centre, the Supervisor on duty made several attempts to contact the grievor to complete his assignment, which included a telephone call to his home. The following day, September 6, the Supervisor reported having received an obscene phone call from the grievor, and in which the grievor made threatening remarks. As a result of the two incidents of September 5 and 6, the grievor was disciplined.

The Brotherhood contends that this was Mr. Grzesiowski's first tidy assignment and not having received previous specific instructions, and having completed the tidy assignment, the grievor departed. It is further claimed that the grievor never made any obscene and threatening remarks to his Supervisor on September 5, 1986. The Brotherhood therefore claims that the assessment of 10 demerit marks was unwarranted and should be removed from his personal file.

The Corporation has denied the Brotherhood's request.

### **FOR THE BROTHERHOOD:**

**(SGD.) TOM MCGRATH**  
**NATIONAL VICE-PRESIDENT**

There appeared on behalf of the Company:

C. O. White	– Labour Relations Officer, Montreal
M. St-Jules	– Manager, Labour Relations, Montreal
C. Pollock	– Labour Relations Officer, Montreal
J. R. Kish	– Personnel & Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. N. Stol                      – Regional Vice-President, Toront  
L. Grzesiowski               – Grievor

### **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied that the material does not establish any dereliction of duty on the part of the grievor. It appears that on September 5, 1986, the grievor was performing his first evening tidy assignment, and that he proceeded directly to the Maintenance Centre, rather than report to Union Station. While this was to some degree irregular, it was not made the subject of any discipline, and, in any event, Mr. Grzesiowski reported to his supervisor by telephone. In the circumstances I am satisfied the he was not specifically aware of the requirement to accompany the train to Union Station and thereafter stand by to assist passengers during the boarding process. While it is undeniable that the grievor did not do what he was supposed to for part of his tour of duty on the evening in question, I am satisfied that this was because of a misunderstanding on his part, rather than negligence or willful misconduct. In the circumstances, that part of the discipline imposed against him with respect to the allegation of dereliction of duty shall be rescinded, and his record shall be amended accordingly. Moreover, the grievor shall be compensated to reflect a payment of a minimum four hours for the terminal duty for which he was called, pursuant to the terms of Article 4.12 of the Collective Agreement.

The second aspect of the grievance is, however, less compelling. The material establishes that when the grievor had left Union Station, and could not be found by his supervisors, they telephoned his home because they were worried about his whereabouts and well-being. Subsequently the grievor telephoned Supervisor C. McMurray, the person who had made the telephone call to his home, and by means of profane and abusive language told her that she should never do so again, threatening to “straighten her out” if she did. Whatever the merits of the grievor’s perception of what had transpired in the Corporation’s efforts to locate him, his outburst towards a supervisor was clearly inconsistent with his obligations as an employee, and was tantamount to insubordination and the threat of assault. For that conduct the imposition of ten demerits was within the range of appropriate discipline, and should not be disturbed.

For the foregoing reasons the grievance is allowed, but only in part. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award

January 13, 1989

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**