# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2004

Heard at Montreal, Tuesday, 14 March 1990

Concerning

## VIA RAIL CANADA INC.

And

## CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

### DISPUTE:

The dismissal of Mr. Marc Dagenais, a probationary employee.

### JOINT STATEMENT OF ISSUE:

Following an incident on board Train 27, Montreal-Quebec on August 26, 1988, the grievor was found to be unsuitable for the position of Senior Service Attendant. As a result, the Corporation invoked the provisions of Article 11.3 of Collective Agreement No. 2 and discharged the grievor.

The Brotherhood contends that Mr. Dagenais was unjustly discharged whereby "unsuitability" for VIA On-Board Services was not established by the single incident. The Brotherhood further seeks reinstatement of the grievor to his former status, and compensation for any loss of wages and benefits.

The Corporation has denied the Brotherhood's appeal.

| FOR THE BROTHERHOOD: | FOR THE CORPORATION: |
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| (SGD) TOM MCGRATH | (SGD) P. J. THIVIERGE |
| NATIONAL VICE-PRESIDENT | ACTING DIRECTOR, LABOUR RELATIONS |

There appeared on behalf of the Corporation:

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| C. Pollock | – Senior Labour Relations Officer, Montreal |
| C. O. White | – Senior Labour Relations Officer, Montreal |
| J. R. Kish | – Senior Advisor, Labour Relations, Montreal |
| D. Lynch | – Head Forecaster & Analysis (Marketing), Montreal |

And on behalf of the Brotherhood:

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| R. Moreau | – Regional Vice-President, Montreal |
| A. Wepruk | – Representative, Montreal |
| J. Brown | – Representative, Montreal |
| M. Dagenais | – Grievor |

## AWARD OF THE ARBITRATOR

The evidence establishes that the grievor was hired on June 8, 1988, and dismissed on August 26, 1998, while he was still a probationary employee. He was, therefore, subject to the terms of Article 11.3 of the Collective Agreement which reads as follows:

> **11.3** Employees will be considered as on probation until they have completed 60 days of actual work in a position covered by this Agreement. Employees found unsuitable during such period will not be retained in the service. Probationary employees shall have access to the grievance procedure.

It is not disputed that during his training course the grievor was counselled many times concerning his attitude and the negative and inappropriate remarks which he had made. His dismissal resulted from an incident aboard Train No. 27, travelling from Quebec City to Montreal on August 13, 1988. While the train was stopped en route and more than one hour behind schedule, the reason for which was not communicated to the passengers, Mr. Dagenais announced to the passengers in his car:

> We are stopped here because we are running ahead of our late schedule. That's a bit much, but that's VIA! Hurry up, board the train and then wait!

In the Arbitrator's view, such an indiscretion on the part of an employee casts serious doubt on his ability to perform satisfactorily for an employer whose operation is dedicated to providing a service to the public. Considering the warnings already given to the grievor by his supervisors concerning his sarcastic remarks, the Arbitrator must conclude that Mr. Dagenais left himself open to a serious disciplinary measure. In the circumstances, the Corporations was justified to conclude that a continuation of his probationary period was not merited and that he had not demonstrated the qualities and maturity desirable in a permanent employee. In this respect the employer's burden of proof is not heavy (*see* ***CROA 1481, 1568*** *and* ***1931***).

I find nothing discriminatory, arbitrary or in bad faith in the Corporation's motives in dismissing the grievor. For these reasons, the grievance must be dismissed.

March 16, 1990

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