

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2019

Heard at Montreal, Thursday, 12 April 1990

Concerning

**VIA RAIL CANADA INC.**

And

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

### **DISPUTE:**

Assessment of 10 demerit marks to the record of P. Gess, Senior Service Attendant, for refusing to serve a coach passenger in the "Park Car", Train No. 1, April 6, 1988.

### **JOINT STATEMENT OF ISSUE:**

A passenger reported to the Service Manager that he was refused service in the "Park Car". The Service Manager sent the passenger back to the "Park Car" and service was again refused. The Service Manager went to the "Park Car" to determine why the passenger was not served and in a written report stated that the grievor showed him a bulletin saying "coach passengers were not allowed back there unless accompanied by the Service Managers"; hence the refusal. As a result, the grievor's record was assessed 10 demerit marks.

The Brotherhood grieved the assessment of the discipline and has asked that it be removed, citing Section 6.9 on page 10 of the Corporation's On-Board Services Manual as the basis for its position.

The Corporation has maintained that the grievor was instructed on previous occasions to provide customer services to coach passengers when circumstances warrant, and has therefore denied the Brotherhood's request.

### **FOR THE BROTHERHOOD:**

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

### **FOR THE CORPORATION:**

**(SGD) P. J. THIVIERGE**  
ACTING DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. O. White – Senior Labour Relations Officer, Montreal  
C. Pollock – Senior Labour Relations Officer, Montreal  
J. R. Kish – Personnel and Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. Cerilli – Regional Vice-President, Winnipeg

### **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied that when the grievor refused service to the passenger, he did so in conformance with the Corporation's own rules. As a coach passenger the complaining client was not entitled to receive bar service in the "Park Car" located at the rear of the train, which was reserved for passengers with sleeping accommodation. While Corporation directives indicated that a passenger in that circumstance could be served in the Park Car with the permission of the On-Board Service Manager, there is nothing in the evidence before the Arbitrator to indicate that the service manager ever communicated such authorization to the grievor. On the contrary, it appears that at one point the grievor and the service manager had a discussion about Mr. Gess' refusal to serve the customer. It appears that subsequently the service manager told the customer to "Go try again." That evidence falls short of establishing a clear direction to Mr. Gess from the service manager that he should serve the passenger in question. Nor does it seem that the passenger communicated the service manager's approval to Mr. Gess, a fact which might arguably have put the grievor on some obligation of inquiry with his service manager.

In all of the circumstances the Arbitrator can find no violation of Corporation rules or standards of courtesy by the grievor disclosed in the evidence. While it is arguable that both the grievor and the service manager could have been more helpful to the customer, I cannot find any basis for the assessment of demerits against Mr. Gess in the circumstances.

For the foregoing reasons the grievance must be allowed. The demerits registered against the grievor's record will be removed forthwith.

April 12, 1990

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