

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2059

Heard at Montreal, Wednesday, 10 October 1990

Concerning

**VIA RAIL CANADA INC.**

And

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

The assessment of 15 demerit marks to Mr. B.T. Roffey for failure to follow instructions on the proper handling of passengers while acting as Conductor on Train 651, October 12, 1989.

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

Mr. B.T. Roffey was the Conductor on Train 651 on October 12, 1989.

At Cobourg, on entraining, a passenger requested that he and some other passengers be permitted to sit in a coach which was, at that time, not in service.

Mr. Roffey refused even though the coach was occupied by Train 651's crew plus several other employees who were deadheading.

As a consequence, Mr. Roffey attended an investigation into this matter on October 20, 1989, plus a supplementary investigation on November 5, 1989, after which he was assessed 15 demerits.

It is the Union's position that there were mitigating circumstances in that the passenger exercised his rights to the fullest extent and that Mr. Roffey had not been trained in handling such passengers. The discipline is therefore unwarranted.

It is the Corporation's position that Mr. Roffey's actions were unjustified and that, given all the circumstances, the assessment of 15 demerit marks was appropriate.

### **FOR THE UNION:**

**(SGD.) M. P. GREGOTSKI**  
for: GENERAL CHAIRPERSON

### **FOR THE CORPORATION:**

**(SGD.) P. J. THIVIERGE**  
for: DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

M. St-Jules – Senior Negotiator & Advisor, Montreal  
K. Taylor – Senior Labour Relations Officer, Montreal  
P. J. Thivierge – Senior Negotiator & Advisor, Montreal

And on behalf of the Union:

M. P. Gregotski – Vice-General Chairperson, St. Catharines  
R. Lebel – Vice-General Chairperson, Quebec

### **AWARD OF THE ARBITRATOR**

The material establishes to the satisfaction of the Arbitrator that Conductor Roffey did fail to maintain a reasonable standard of civility and consideration in dealing with a number of passengers on Train 651 on October 12, 1989. That conclusion is supported by a number of letters of complaint filed by passengers aboard his train. While one of those passengers appears, as the Union suggests, to be something of a self-styled consumer advocate for train passengers who may have acted aggressively towards the grievor, there is no evidence to suggest that a number of other passengers who wrote separate letters of complaint acted other than by their own motivation.

The material establishes that Mr. Roffey refused to allow a number of passengers to travel in the third car of his train's consist. It appears that the reason he gave the passengers is that he did not wish to open another car which would thereafter have to be cleaned. During his investigation, however, he stated that the reason for keeping the car closed was that it had a defective toilet which caused an unpleasant odour. The truth of that assertion is doubtful, firstly in light of the fact that it was not communicated to the passengers and secondly, because the train's crew and several deadheading employees used the empty car for their own purposes.

The grievor is not a long service employee, having some two and one-half years' service. Some ten months prior to the incident in question he was assessed ten demerits for making an inappropriate verbal response to a passenger. In all of these circumstances the Arbitrator is satisfied that the assessment of fifteen demerits fell within the appropriate range of discipline. For these reasons the grievance must be dismissed.

12 October 1990

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