

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2085

Heard at Montreal, Wednesday, 12 December 1990

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Twenty demerit marks assessed Mr. R. Vani.

JOINT STATEMENT OF ISSUE:

On May 16, 1988, the shop foreman at the Montreal Maintenance Centre submitted a written report in which he noted, among other things, that Mr. Vani had opened the door of his office, pointed his finger at him and made a threatening remark.

Following an investigation held May 18, 1988, twenty demerit marks were assessed the grievor's record for: "Your conduct towards a supervisor the night of May 12--13, 1988". (translation)

The Brotherhood claims that the discipline is excessive and not in proportion with the alleged offence and requests that it be removed. The Corporation has rejected the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) T. MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

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| C. Pollock | – Senior Officer, Labour Relations, Montreal |
| D. Fisher | – Senior Officer, Labour Relations, Montreal |
| F. Auclair | – Shop Foreman, Montreal |
| A. Raynault | – Inspector, Montreal |

And on behalf of the Brotherhood:

- | | |
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| R. Moreau | – Regional Vice-President, Montreal |
| J. Brown | – Representative, Montreal |
| P. Duhamel | – Local Chairman, Montreal |

AWARD OF THE ARBITRATOR

The Arbitrator must conclude, based on the preponderance of the evidence, that the Corporation has not established that the grievor directed a threatening remark or gesture at the shop foreman as the latter claims. However, it is clear that Mr. Vani did allow himself to communicate his scorn for the supervisor, because he did not like the directive which the supervisor had come to give him. It was at this point that he sulked and took himself out of service before calming himself and, finally, returned to work.

In the Arbitrator's view, Mr. Vani did deserve some discipline for his lack of control and respect vis-à-vis the shop foreman. However, the directive of the latter seems to me to have been unduly authoritative. On the whole, the incident reveals an infantile conflict between two people who allowed themselves to be directed more by pride than by judgement. Given the positive discipline record of the grievor, I consider that in the circumstances five demerit marks would suffice to communicate to him the desired lesson.

Therefore, I order that the discipline file of Mr. Vani be amended and that five demerit marks be shown on the grievor's file, rather than twenty, for the incident in question.

December 14, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR