

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2391

Heard at Montreal, Wednesday, 15 September 1993

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The discipline assessed to Mr. H. Henry.

JOINT STATEMENT OF ISSUE:

Following an investigation held on August 28, 1992, the grievor was assessed with 30 demerit marks and three (3) days held out of service to count as suspension for insubordinate conduct and use of abusive language towards a supervisor.

The Brotherhood believes that in that the grievor was acting as a Local Chairperson when he met with his supervisors, he is not to be held responsible for his actions.

The Corporation maintains that the grievor's behaviour warranted discipline as Mr. Henry is an employee of the Corporation and although he is an elected representative of the bargaining unit, he remains subject to the legitimate directions of his supervisor, regarding his job as a Senior Service Attendant.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) T. N. STOL

NATIONAL VICE-PRESIDENT

C. C. MUGGERIDGE

DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Rouleau	- Senior Labour Relations Officer, Montreal
C. Pollock	- Senior Labour Relations Officer, Montreal
J. R. Kish	- Senior Advisor, Labour Relations, Montreal
R. DeWolfe	- Manager, On-Train Services, Toronto

And on behalf of the Brotherhood:

M. Lesperance	- Representative, Toronto
T. N. Stol	- National Vice-President, Ottawa
H. Henry	- Grievor

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the language used by Mr. Henry was abusive and insubordinate in the circumstances. By the grievor's own account, while the initial part of his conversation with managers Mark Watson and Ron DeWolfe concerned union matters with which he was dealing in his capacity as steward, the latter part of their discussion was clearly separate, and concerned his work performance on his tour of duty the day prior. It appears that when the supervisors questioned Mr. Henry about several aspects of his performance, as well as the performance of another employee, and suggested to him that he should be a role model, he quickly became angry and used several "four letter" words in his response to them. It is also clear that he immediately left the office in the heat of his anger, notwithstanding Mr. DeWolfe's request that he return and finish the conversation.

In the case at hand the Arbitrator cannot accept the suggestion advanced by the Brotherhood to the effect that a degree of latitude should be allowed by reason of the grievor's union office. While it is true that special standards and allowances may apply to communications between management and union officers in respect of collective bargaining matters, the exchange giving rise to this grievance does not fall within that category. By his own candid admission, Mr. Henry acknowledges that he did not consider the questions about his own performance to be in any way related to the union matters which had previously been discussed.

The issue then becomes the appropriate measure of penalty. In the Arbitrator's view, in light of all of the circumstances, including Mr. Henry's length of service and the fact that the grievor had a clear record for some five years previous, the assessment of thirty demerits coupled with a three day suspension is excessive. I am satisfied that a one day suspension would, in the circumstances, have sufficed to convey to the grievor the need to refrain from abusive language in any dealings with his supervisors in his capacity as an employee. For the foregoing reasons the Arbitrator directs that the thirty demerits be removed from Mr. Henry's record, and that he be compensated for wages and benefits lost in respect of two of the three days for which he was suspended.

September 17, 1993

(sgd.) MICHEL G. PICHER
ARBITRATOR