

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2822

Heard in Montreal, Tuesday, 11 February 1997

concerning

**VIA RAIL CANADA INC.**

and

**UNITED TRANSPORTATION UNION**

**EX PARTE**

### **DISPUTE:**

Appeal of discipline assessed Assistant Conductor N. Thomas.

### **EX PARTE STATEMENT OF ISSUE:**

On June 28/95 N. Thomas was the assistant conductor on train 67. Seventy-nine days after this tour of duty, Mr. Thomas was required to provide an employee statement in connection with this tour of duty (June 28/95). Subsequent to the employee statement, Mr. Thomas was assessed a 30 day suspension "for being discourteous and rude towards customers while assigned as assistant conductor on train #67 on June 28, 1995."

The Union appealed the discipline assessed as being unwarranted or in the alternative too severe. It is also the position of the Union that the Corporation has violated the provisions of article 73 of agreement 12 by not holding a timely investigation.

### **FOR THE UNION:**

**(SGD.) M. P. GREGOTSKI**  
**GENERAL CHAIRMAN**

There appeared on behalf of the Corporation:

E. Houlihan – Senior Officer - Contracts, Labour Relations, Montreal  
D. Trubiano – Senior Officer, Labour Relations, Montreal

And on behalf of the Union:

G. E. Bird – Vice-General Chairman, Montreal  
W. Kruize – Grievor  
N. Thomas – Grievor

## AWARD OF THE ARBITRATOR

Based on the material presented the Arbitrator is satisfied, on the balance of probabilities, that Assistant Conductor Thomas was unduly abrupt in dealing with passengers while working on train no. 67 on June 28, 1995 between Montreal and Toronto. As related in two letters of complaint from several passengers, which the Arbitrator accepts as reasonably accurate as to the facts, Assistant Conductor Thomas was required to ask two passengers to stand and allow him to turn their seat into a forward direction, in keeping with Corporation directives. It is common ground that there are a limited number of four seater configurations allowed in a given car, and that the seat in question was improperly positioned. As appears from a letter of complaint filed by one of the passengers, Mr. Thomas at one point explained that the seats must be turned to allow the other passengers to recline. It appears that the passengers took exception to Mr. Thomas' request, and that they were emboldened in their position when the passengers in the seats behind indicated that they had no objection to the existing configuration, and would not need to recline their own seats.

One of the passengers affected asked Mr. Thomas for his name at that point, and he declined to give it. He apparently indicated that he could not make an exception to the rule, and that the Conductor would have to make a decision. It would appear that Mr. Thomas then radioed Conductor Kruize who attended immediately and, according to the letters of complaint, immediately advised the passengers that if they did not comply with Mr. Thomas' request they would be put off the train at the next stop, Cornwall. The seat was then turned, but the incident resulted in the two letters of complaint being sent to the Corporation's president, signed by some eleven persons. The thrust of the complaints against Mr. Thomas are that he was rude and disrespectful in the way he dealt with the passengers.

It appears that the letters of complaint, dated June 28, were only received by the Corporation in early August. A disciplinary investigation in respect of these events was conducted on September 14, 1995, following a notice to the grievor on September 8, 1995. At the investigation the grievor denied any recollection of the events in question.

The first issue to be determined is whether there was a violation of standards of conduct and courtesy towards passengers on the part of Mr. Thomas. The Arbitrator is compelled to the conclusion that there was. While the Arbitrator accepts that Mr. Thomas may not have felt that he had any flexibility with respect to the issue of turning the seat, and that he was required to do so by Corporation directives, the thrust of the complaint against him relates entirely to his manner of communication. As the Arbitrator accepts the statement of the complainants that the grievor declined to give his name when asked to do so, there is reason to conclude, on balance, that he was aware that his own conduct in dealing with the passengers was questionable. That fact, combined with the unusual event of two separate letters of complaint being filed, signed by some eleven passengers, leads the Arbitrator to conclude that there is substance to the complaint made against Mr. Thomas, as regards his conduct towards the passengers in question.

There are, however, some mitigating factors to be taken into account. Firstly, based on the letters of complaint themselves, it cannot be said that Mr. Thomas did not attempt to offer some explanation for the rule he was compelled to apply. The complainants themselves indicate that Mr. Thomas did explain that one of the reasons for the rule is to allow the passengers immediately behind the turned seat the possibility of reclining their seats. Unfortunately, as the passengers in question indicated that this did not matter to them, that explanation, or its inapplicability, only encouraged the passengers in their resistance to his request. The fact remains, however, that Mr. Thomas did attempt to give some rationale for the rule he was compelled to enforce.

Concern also arises by reason of the delay between the incident and the date of the investigation. The Corporation's representative suggests that the grievor is less than candid in his denial of any recollection of the incident. However, there was a substantial lapse in time before Mr. Thomas was told of the problem on his tour of duty of June 28. It is not clear to the Arbitrator that the lapse of some seventy-nine days between the incident and the investigation is consistent with the standard contemplated in article 73.6 of the collective agreement which provides:

**73.6** It is understood that the investigation will be held as quickly as possible, and the layover time will be used as far as practicable.

Even allowing for some lapse of time for the late arrival of the letter of complaint, and for the Corporation's own internal preliminary inquiries, it is less than ideal for the grievor to be first advised on September 8 with respect to

complaints concerning a very brief incident which occurred more than two months prior. A failure to recall an incident in that circumstance is not entirely implausible.

Finally, the Arbitrator must take cognizance of the length and quality of the grievor's service. It is common ground that Mr. Thomas has never previously been disciplined for rudeness toward passengers, and that his disciplinary record was clear at the time of the incident giving rise to the complaints. He is, by any standard, a long service employee, with a total of thirty-one years of service since his original hire by CN Rail, the most recent ten years of his service being with the Corporation.

In the result the Arbitrator is satisfied that, even allowing for an appropriate measure of deterrence in the discipline assessed, a thirty day suspension for a first infraction of this kind is excessive. In my view a suspension of two weeks would have been amply sufficient to communicate to the grievor and to other similarly situated employees the importance of dealing courteously at all times with passengers. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect a suspension of two weeks for the reasons reflected in the notice of suspension provided to the grievor, with corresponding compensation for wages and benefits lost.

February 14, 1997

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