

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3017

Heard in Montreal, Thursday, 10 December 1998

concerning

VIA RAIL CANADA INC.

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

EX PARTE

DISPUTE:

The assessment of forty-five (45) demerits to Mr. Arden Osborne and his subsequent dismissal for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On October 27, 1997, the Corporation held an investigative hearing concerning a customer complaint. The complaint involved an incident with customer Ms. Wendy Bassett, and allegedly on September 30, 1997. Following the hearing the grievor was assessed 45 demerits "In connection with a passenger complaint related to your tour of duty as a Counter Sales Agent in Edmonton Station on Tuesday, September 30th, 1997." The assessment of demerits brought the grievor's total to ninety (90) resulting in his dismissal.

It is the Union's position that the incident with the customer was non-culpable. That the customer failed to provide any objective evidence to substantiate her claim that the grievor's "behaviour was just terrible". The customer's reflections on the incident are in fact subjective and that the grievor's explanation of the events are more credible.

It is further the Union's position that even if the grievor was found to have been at fault, the discipline assessed is excessive in the circumstances and should be mitigated by the grievor's long service. The Union seeks reinstatement without loss of wages or benefits.

The Corporation has denied the Union's request at all steps of the grievance procedure.

FOR THE UNION:

(SGD.) R. JOHNSTON
PRESIDENT

There appeared on behalf of the Corporation:

- E. J. Houlihan – Senior Manager, Labour Relations, Montreal
- C. Pollock – Senior Officer, Labour Relations, Montreal
- L. Laplante – Officer, Labour Relations, Montreal

And on behalf of the Union:

- D. Olszewski – National Representative, Winnipeg
- R. Bir – Regional Representative
- A. Osborne – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor's dealings with a customer at the Edmonton station on September 30, 1997 caused the filing of a complaint against him. The customer relates that baggage personnel informed her that she and her eleven year old son could pre-board their train, bound for Winnipeg. The grievor was then in charge monitoring the pre-boarding line. As the customer and her son approached, the grievor stopped them and inquired as to why they were pre-boarding. The questioning, apparently in front of a number of other passengers, made the passenger extremely uncomfortable as she was not immediately aware of the appropriate answer, save that she had been told by baggage staff that she could pre-board. The account of the passenger suggests that there were repeated questions put to her by the grievor the tone and nature of which made her extremely uncomfortable. Finally, when she indicated to him that she had a problem knee, it appears that she was allowed to proceed.

While the grievor gives a different account of the incident, the Arbitrator is satisfied, with due allowance for a degree of exaggeration due to anger on the part of the passenger, that the essential account of events found in her letter of complaint is correct. I must sustain the position of the Corporation that the grievor was unnecessarily obstructive to the complaining passenger and her son, caused them unnecessary embarrassment, and in so doing failed in one of the most fundamental obligations of an employee who works on the front line of providing service to the public. The Arbitrator is satisfied that the actions of the grievor were deserving of discipline.

While standing alone the incident in question might not elicit the most serious measure of demerits, the Corporation considers that the events of September 30, 1997 constituted a culminating incident which justified the assessment of forty-five demerits and the consequent dismissal of the grievor for an accumulation of demerits in excess of sixty. In the Arbitrator's view there is a degree of validity to that perception on the part of the employer. Firstly, the record discloses that employees were put on notice in 1994 that incidents involving rudeness to the public would generally be dealt with more severely than had been the case previously. Secondly, as the material before the Arbitrator demonstrates, the grievor has a less than enviable prior disciplinary record as regards passenger complaints and rudeness with the public. He has been subject to discipline for behavioural reasons, involving passengers and other employees, on at least seven prior occasions, the most recent resulting in the assessment of thirty demerits, as reflected in **CROA 3016**.

There are two other mitigating factors to consider in relation to the appropriate measure of discipline in this case. Firstly, it does not appear disputed that the Corporation has not provided employees with any specific instructions or guidelines with respect to standards to apply in the pre-boarding of passengers. While it is obvious that there must necessarily be a degree of discretion exercised by any employee so engaged, it is not unreasonable to expect some guidance from the Corporation with respect to the physical condition of passengers who may wish to pre-board, or the number and age of children who might justify such a privilege. A certain degree of vigilance is obviously necessary to the process, if only to avoid legitimate pre-boarding passengers complaining against an employee's laxity in allowing the undeserving to trespass upon the pre-boarding line. There does not appear to be any dispute that in the case at hand the grievor was without any general policy or guideline to assist him in dealing with the customer in question. Secondly, the Arbitrator must give some weight to the grievor's longevity of service. While his record is less than exemplary, he was employed for some twenty years at the time of the incident giving rise to his dismissal. In my view, while the grievor should consider well the need to be more sensitive to passengers and to avoid similar occurrences in the future, the length of his prior service would justify the substitution of penalty, albeit by the onerous alternative of a lengthy suspension. Mr. Osborne must appreciate that any future recurrence of events of this kind may have the most serious of consequences.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the forty-five demerits assessed against the grievor be stricken from his record, and that he be reinstated into his employment without compensation or benefits and without loss of seniority, with the period out of service to count as a suspension.

December 14, 1998

(signed) MICHEL G. PICHER
ARBITRATOR

SUMMARY- CROA 3017

A. Osborne discipline accumulation unbecoming conduct with customer prior record culminating incident last chance reinstate without compensation (CROA 3016) – GRIEVANCE ALLOWED

KEYWORDS – 3017

Discipline accumulation unbecoming conduct prior record length of service allowed

VIA – CAW – December 10 1998 – award dated December 14 1998