

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3342

Heard in Montreal, Wednesday, 11 June 2003

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Discharge of Locomotive Engineer Christie following an incident which occurred during his tour of duty August 20, 2002.

BROTHERHOOD'S STATEMENT OF ISSUE:

On August 20, 2002, Locomotive Engineer Christie was assigned to train 90 travelling between Niagara Falls and Toronto.

At Aldershot Station he observed someone opening a door at the rear portion of the train under the NEPO rules that he did not recognize as a crew member. He went back to investigate and found the individual to be a supervisor. An Altercation occurred and following verbal and cellular communication between the parties involved Locomotive Engineer Christie was removed from service and found his own way home.

A 14 minute delay to the train occurred as a result. An investigation was held on August 27th and Locomotive Engineer Christie was assessed 60 demerit marks and discharged.

A grievance was filed on October 7, 2002 appealing the discipline assessed.

The Corporation chose not to respond.

FOR THE BROTHERHOOD:

(SGD.) J. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Sr. Manager, Labour Relations, Montreal
B. E. Woods	– Director, Labour Relations, Montreal
W. Buckley	– Manager, Customer Services, Montreal
M. Lavaller	– Manager, Control Centre, Montreal

And on behalf of the Brotherhood:

J. Tofflemire	– General Chairman, Oakville
S. Chamberlain	– Counsel, Ottawa
D. Christie	– Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that on August 20, 2002 Locomotive Engineer Christie was one of two locomotive engineers operating train 90 travelling between Niagara Falls and Toronto. Mr. Christie was the operating engineer. Following normal procedures, upon their train's arrival at Aldershot Station Locomotive Engineer Meyer, who was then the in-charge locomotive engineer (ICLE), gave a radio direction to the train's service manager, Ms. Linda Boudrier, to open the doors of the train on the right side. Mr. Christie then noticed in the rear view mirror a person on the station platform lifting the key flap of one of the coaches and apparently attempting to open a coach door from the outside. He advised Mr. Meyer that he believed that a person was attempting to entrain without his knowledge or permission, and advised Mr. Meyer that he would investigate and be back momentarily.

In one of the coaches of the train, with the assistance of Ms. Boudrier, Mr. Christie identified the person who had apparently been using a key to open one of the doors of the train. After a brief exchange of introductions, during which Mr. Christie was advised that the person in question was a VIA manager, Mr. Wade Buckley, who is Manager of Customer Services, a confrontational conversation ensued. At the arbitration hearing Mr. Buckley explained that he resides near Aldershot and was then travelling from Aldershot Station to his office at Union Station in Toronto. He explained to the Arbitrator that he was then following a practice that he had developed over a number of days, which the Company's representative suggests was common among other managers, namely to listen to the internal communication on the train with his radio, and to open a door once the ICLE gave the signal to the service manager to do so, as a means of helping the crew.

Mr. Christie, who apparently had no knowledge of any such practice, was not impressed. He immediately demanded that Mr. Buckley hand over his key to him for the balance of the trip to Toronto, which Mr. Buckley refused to do. Mr. Christie then asserted to him that the train would not proceed until he surrendered his key, that he should not in fact board the train and that he would call the Control Centre to report the situation. Mr. Buckley, holding his ground, responded that he would get on the train and that Mr. Christie would do well to return to the engine and get under way.

Shortly thereafter the grievor telephoned an operations dispatcher named Nicholas. When Mr. Christie related to him that an unauthorized individual had attempted to use a key without authority on the station platform at Aldershot, the Control Centre dispatcher asked him to hold on for a moment. It appears from the transcript of the telephone conversation that a three-way telephone conversation was then patched together involving Mr. Christie, another Control Centre dispatcher named Pete and Mr. Buckley. Shortly into the conversation Mr. Buckley stated to Mr. Christie: "Do you understand that I'm the manager?" to which Mr. Christie responded in the affirmative. As Mr. Christie attempted to repeat that Mr. Buckley was not authorized to open a car door Mr. Buckley interjected "Do you understand that this train is due to leave here a long time ago?". To that Mr. Christie responded "Either I'm out of service right now or I get that key, take your pick." Mr. Buckley, who is himself CROR qualified to be in a locomotive, then advised Mr. Christie that he was out of service, and the train proceeded onwards to Toronto with Mr. Meyer and Mr. Buckley at the controls.

Following a disciplinary investigation convened on August 27, 2002, the grievor was assessed sixty demerits for insubordination in relation to the incident of August 20, 2002 at Aldershot. He was then dismissed on account of the accumulation of demerits. The Corporation's representative submits that the grievor comported himself as an ungovernable employee with a disproportionate sense of his own authority. He notes that there was nothing said by Mr. Christie at the time of the incident to relate his concerns as to safety, an issue apparently raised during the subsequent disciplinary investigation. According to his characterization Mr. Christie, who had previously been disciplined for insubordination (**CROA 3242**) was, in effect, more interested in engaging in a power showdown with the Corporation's supervisor than in attempting to find a reasonable solution. He submits that delaying the train for some fourteen minutes when the grievor became aware that Mr. Buckley was a Corporation supervisor, and subsequently compelling him to take him out of service – a gesture which he characterizes as a threat in the belief that the Corporation would have to bring a replacement locomotive engineer to Aldershot – amounted to a demonstration of intransigence in the face of authority that makes the grievor's continued employment unmanageable. Based on the record of the disciplinary investigation, he submits that in fact the grievor appears to have learned nothing, and can fairly be expected to comport himself in a similar authoritarian fashion in the future, without regard to the need to solve problems rather than create them in the furtherance of the Corporation's passenger service.

The Arbitrator must agree with the Corporation's characterization of the conduct of Mr. Christie as insubordination. Even accepting the excessive "by the book" orientation demonstrated by Mr. Christie, who stressed

during the course of the investigation that Mr. Buckley had not been involved in any pre-trip crew meeting, was unaware of any specific condition which might affect the doors or equipment on the train and could not be left as a free agent to possibly open doors from the inside as the train moved from Aldershot to Toronto, the fact remains that there were vast areas of common sense which could have been applied, and which apparently simply did not occur to Locomotive Engineer Christie. He could, for example, have simply asked Mr. Buckley for his undertaking that he would not utilize the key for the balance of the trip, and then availed himself of the ability to file a complaint concerning safety or lodge a grievance in relation to the incident. The regrettable conclusion to which the Arbitrator is compelled is that Mr. Christie preferred to match wits and authority with Mr. Buckley. The Arbitrator agrees that Mr. Christie made himself liable to dismissal, particularly once it became clear to him that the Mr. Buckley was a supervisor and he nevertheless refused to advance his train.

In considering whether the Arbitrator should exercise his discretion to reduce the penalty for this incident there are both mitigating and aggravating factors to be considered. An obvious aggravating factor is the disciplinary record of Mr. Christie. As reflected in **CROA 3242**, on February 7, 2001 he engaged, along with another locomotive engineer, in a refusal to operate VIA train no. 68 between Toronto and Montreal beyond Guildwood Station. On that occasion an examination of the wheels of two of the cars in the train consist found a degree of “shelling”. When an equipment supervisor qualified to assess the situation inspected the wheels and found them fit to proceed in accordance with established standards, the grievor and his fellow locomotive engineer nevertheless asserted their own opinion, in disagreement with the Corporation’s expert, and refused to proceed onwards. In that case, following a lengthy disciplinary investigation during which the arbitrator found Mr. Christie to have been uncooperative and unduly combative, the Corporation assessed thirty demerits against Mr. Christie, which was reduced to twenty demerits by the arbitrator by reason of Mr. Christie’s long and exemplary service.

What can be said to be mitigating factors? Firstly, it is significant that Mr. Christie has been employed for some twenty-nine years, commencing in 1974. He qualified as a locomotive engineer with CN in 1978 and transferred into service with VIA Rail in or about 1992. Prior to the events reviewed in **CROA 3242** he had only once previously been disciplined, incurring ten demerits over a lengthy career virtually unblemished by serious operating infractions or other misconduct. It would also appear that the situation might have been avoided if Mr. Buckley had given notice to the train’s engineers, by radio, of his intention to open the coach door. As stressed by the representative of the Brotherhood, it is not uncommon for a supervisor in that circumstance to first radio the head end of the train to let the crew know that he or she will be opening a door to assist in the entraining and detraining of passengers. At the hearing Mr. Buckley did not dispute that it might have been appropriate for him to make such a communication by radio to the head end as the train was entering Aldershot.

When all of the factors are considered, the Arbitrator is left with substantial concern about the attitude displayed by Mr. Christie. While it is understandable that he may have been concerned upon sighting an unknown individual apparently attempting to open a door of his train, it is difficult to understand on what basis he could reasonably refuse to move his train out of Aldershot until such time as that person, whom he then understood to be a Corporation supervisor, surrendered his key. As noted above, there was no attempt whatsoever on the part of Mr. Christie to explore a reasonable solution with Mr. Buckley. Much as in **CROA 3242**, the grievor seemed far more interested in asserting his authority than solving a problem in a way that would maximize the Corporation’s service to its passengers, with the least disruption.

On the whole, therefore, largely by reason of the length of the grievor’s service, I deem it appropriate to restore the grievor to his employment. I am nevertheless of the view that the lengthy suspension which he has suffered since being taken out of service is amply deserved, and can be appropriately substituted as his disciplinary penalty, in lieu of the assessment of sixty demerits. An effective suspension of close to ten months should, it is to be hoped, bring Mr. Christie, who is an otherwise good employee of long service, to understand that the mantle of authority is to be worn with forbearance and restraint, and that the continued assertion of authoritarian brinkmanship is a path that would be extremely hazardous for his continued employment.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost, and without loss of seniority. The demerits assessed against him shall be removed from his record, and the period between his discharge and reinstatement shall be recorded as a suspension for his insubordination in relation to the incident at Aldershot Station on August 20, 2002.

June 13, 2003

(signed) MICHEL G. PICHER
ARBITRATOR