

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3424

Heard in Montreal, Wednesday, 12 May 2004

concerning

VIA RAIL CANADA INC.

and

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

EX PARTE

DISPUTE:

Concerning the assessment of 10 demerits to the record of Ms. Deborah Lee.

UNION'S STATEMENT OF ISSUE:

On October 16th, 2002, Ms. Deborah Lee was investigated for an alleged incident between herself and Mr. Sullivan. The incident was reported by a fellow employee, Mr. Don Workman. During the investigation Ms. Lee denied that an altercation between her and Mr. Sullivan occurred. Mr. Sullivan also denied the allegations made in the statement by Mr. Workman. There was further evidence provided during the course of the investigation to suggest that the allegations were false. Further there was no evidence, except for the one statement from Mr. Workman, to substantiate the allegations of October 5th, 2002.

It is the Union's position that such allegations must be substantiated by clear and cogent evidence. The instant case contains no evidence which could be considered either clear or cogent. We are therefore requesting that the discipline be expunged from the grievor's record and that she be compensated for any lost wages or benefits as a result of the discipline assessed.

CORPORATION' STATEMENT OF ISSUE:

The Corporation held an investigation on October 16, 2002 regarding Ms. Deborah Lee's conduct while on duty October 5, 2002. More particularly, Ms. Lee held a loud, aggressive and foul-mouthed conversation with a colleague that was heard by others, including customers. The incident was reported by a fellow employee, Mr. Workman, who at the time was serving a customer and could hear the discussion and its content.

The incident of October 5, 2002 is the 4th incident of conduct unbecoming an employee within a very short time frame and fully warrants the ten (10) demerit points that were assessed.

For the above reason the Corporation has denied the grievance.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE CORPORATION:

(SGD.) B. E. WOODS
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

- L. Béchamp – Counsel, Montreal
- L. Laplante – Sr. Officer, Labour Relations, Montreal
- C. DiGrazia – Manager, Customer Service, Ottawa

And on behalf of the Union:

- D. Olszewski – National Representative, Winnipeg
- T. Blanchard – Bargaining Representative, Toronto
- D. Delcloe – Vice-President, Local 4003
- D. Lee – Grievor

AWARD OF THE ARBITRATOR

The Corporation assessed ten demerits against the grievor for what it alleges was conduct unbecoming an employee on October 5, 2002, concerning a conversation between herself and fellow employee Frank Sullivan. The allegation is that Ms. Lee used foul and abusive language during her encounter with Mr. Sullivan in speaking of Lead Hand Gilbert Seymour.

Mr. Sullivan denies that any such statements were made. So does the grievor. The only basis for the Corporation's position is a report filed by employee Don Workman. The record establishes, to the satisfaction of the Arbitrator, that for reasons

he best appreciates Mr. Workman has become antagonistic to Ms. Lee, becoming an informer against her with respect to alleged minor infractions, down to the smallest details, apparently recorded to the minute. There is, in these unusual circumstances, reason to seriously doubt the credibility of an account provided by Mr. Workman, particularly when it is categorically denied by both the grievor and Mr. Sullivan. Bearing in mind that the Corporation has the burden of proof in this matter, the Arbitrator cannot find that the case at hand discloses any wrongdoing, on the balance of probabilities.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the ten demerits registered the grievor's record be removed.

May 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR