

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3425

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 a two week suspension assessed to Ms. Deborah Lee, Counter Sales Agent, Kingston.

### **UNION'S STATEMENT OF ISSUE:**

On March 19th, 2003, Ms. Deborah Lee was subjected to a formal investigation concerning her "alleged behaviour while on duty March 4th, 2003." Following the investigative hearing she was assessed with a two week suspension for alleged "unbecoming conduct while on duty on March 4th, 2003."

On March 4th 2003, a group of people arrived at the Kingston Station a few minutes prior to their train departing. They did not have reservations. They insisted on buying tickets at the student rate, however, they did not have the required ISIC card. Because Ms. Lee refused to sell them tickets at the student rate they became quite hostile and filed a complaint with VIA. The Corporation assessed Ms. Lee with a two week suspension as a result of the complaint.

It is the Union's position that the investigative statement did not reveal any wrongdoing by the grievor. Furthermore, the Corporation appears to imply that Ms. Lee could have overruled its policies regarding student fares; and, granted the alleged students a cheaper fare, thus avoiding the complaint. Given that the Corporation had previously disciplined and dismissed employees for same, we cannot agree, and it is the Union's position that Ms. Lee acted properly in accordance with the employer's own procedures.

The Union requests the discipline be expunged from Ms. Lee's record, and that she be compensated for all lost wages and benefits.

**CORPORATION' STATEMENT OF ISSUE:**

Following a customer complaint, the Corporation held an investigation on March 19, 2003, regarding Ms. Debbie Lee's conduct while on duty March 4, 2003. On such date, Ms. Lee was rude and arrogant towards customers, refused to provide the customers with her name and answered their queries in a manner that does not meet the Corporation's service expectations or goals.

Following the investigation, Ms. Lee was assessed a two week suspension as a last chance measure given her current discipline record. At the time of the incident Ms. Lee's record stood at 55 demerits. All previous incidents related to similar conduct. Prior to the incident of March 4, 2003, Ms. Lee had been provided with coaching to help her manage her behaviour.

In the circumstances, the assessment of a two-week suspension was appropriate, reasonable and progressive in nature.

For the above reasons, 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 Arbitrator is satisfied that the grievor did engage in a conversation with three young adults at her wicket in the Kingston Station on March 4, 2003, using an unacceptable tone of voice and that she was unhelpful and sarcastic in her dealings with them. It appears that the problem arose when Ms. Lee advised the students that

they could not purchase tickets at a student discount as they did not have the proper ISIC student cards with them, and did not have sufficient identification to prove that they were full time students.

A letter of complaint received by the Corporation, written by the mother of one of the students who was also present at the time, confirms to the satisfaction of the Arbitrator that the grievor did demonstrate a lack of tact and sensitivity to the customers in the way she dealt with them. Of equal concern is that when the customers, obviously feeling poorly served, asked the grievor for her name she refused to provide it. Apart from raising questions as to the defensiveness that would prompt such a response, it is far from clear to the Arbitrator that it can be appropriate for a person dealing with the public to refuse entirely to give a name, even a first name, when asked to do so. The inevitable result is that the employee risks the appearance of seeking to frustrate the ability of the customer to complain, or the ability of higher management to become sufficiently informed to deal with the issue.

The Arbitrator is satisfied that there are reasons to re-examine the extent of the discipline assessed, which in the case at hand was a two week suspension. The suspension was resorted to because at the time the grievor's level of demerits stood at fifty-five. In fact, however, that level of discipline has been reduced by the prior awards of this Office, issued on the same date as this award (see **CROA 3423** and **3424**). In fact, by the result of those awards, the grievor's discipline record would have stood at twenty-five demerits at the time in question. More fundamentally, it is not clear to the

Arbitrator that, in any event, a penalty as severe as a two week suspension was justified in the circumstances. Ms. Lee is an employee of some twenty-five years' service who had an exemplary disciplinary record prior to December of 2000. In all of the circumstances I am satisfied that the assessment of fifteen demerits, which would bring her demerit total to forty, would have been a more appropriate manner of dealing with the incident in question, and would have been sufficient to bring home to Ms. Lee the importance of being fully helpful to customers and providing her name, if only her first name, when requested to do so.

The grievance is therefore allowed, in part. The Arbitrator directs that the suspension recorded against the grievor be struck from her record, and that she be compensated for all wages and benefits lost, with the substitution of fifteen demerits for the incident of March 4, 2003.

May 17, 2004

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