

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3994

Heard in Montreal, Thursday, 14 April 2011

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

The assessment of twenty-five (25) demerits to Mr. N. Nasraoui.

JOINT STATEMENT OF ISSUE:

On August 26, 2010 an investigation was held for Mr. Nasraoui for his alleged conduct unbecoming and damage to Corporation property on August 18, 2010. Mr. Nasraoui was subsequently issued twenty-five (25) demerits.

The Union contends that the discipline was excessive, unfair and unwarranted. The incident was not intentional and was accidental, and there were mitigating factors that should have been taken into account. The Union further contends the Mr. Nasraoui is a senior employee.

The Union seeks the discipline be expunged and Mr. Nasraoui be reinstated with full employment, without loss of seniority and reimbursed all wages and benefits.

Mr. Nasraoui damaged company property by slamming a company truck door causing a window to shatter.

The Corporation submits that Mr. Nasraoui was in violation of the Corporation's Code of Conduct and policies and the discipline imposed was warranted and justified.

FOR THE UNION:
(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE

FOR THE CORPORATION:
(SGD.) B. A. BLAIR
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

B. A. Blair – Sr. Advisor, Labour Relations, Montreal
L. Selesnic – Manager, Customer Experience, Montreal

There appeared on behalf of the Union:

R. Fitzgerald	– National Representative, Toronto
D. Andru	– Regional Representative, Toronto
N. E. Nasraoui	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on August 18, 2010, while working as stock checker at the Toronto Maintenance Centre, Mr. Nasraoui exited the driver's side of a cube van which he was driving during the course of his employment. It appears that he was then disturbed about the fact that his normal workmate, Mr. Steve Bynoe, had absented himself from the work place for a period of time during the morning to go to a drug store. Following his return, while Mr. Bynoe and the grievor were loading train no. 83, according to a written report filed by Mr. Bynoe, a tension arose between the two. According to Mr. Bynoe's account, which the Arbitrator accepts, when the two employees reached the parking place the grievor referred to him as a "stupid bitch" which caused Mr. Bynoe to respond that Mr. Nasraoui is the stupid one. Following that exchange the grievor exited the truck and slammed the driver's side door with such force that its window shattered entirely. Following an investigation the Corporation assessed twenty-five demerits against the grievor for causing damage to Corporation property.

The Corporation relies, in part, on the fact that the grievor had previously been discharged for a physical assault on another employee, albeit he was reinstated following a reduction of his penalty by this Office in **CROA 3315**. Its representative maintains that in the circumstances the assessment of twenty-five demerits was not inappropriate. The Union's representative questions whether the discipline is appropriate. He submits that the grievor was then under personal stress, partly by reason of a divorce as well as due to the fact that he was then fasting for the holy month of Ramadan, as well as trying to quit smoking.

The Arbitrator has some difficulty with the submission of the Union. While the circumstances in one's personal life may be difficult, the obligation of an employee of

respect for the employer's property is not thereby reduced. That the grievor clearly applied excessive force in slamming the truck door shut, following an exchange of insults between himself and his co-worker, leaves little doubt but that his action was deliberate and reckless as to the outcome. The fact that the glass in the door of the cube van shattered is itself a testimony to the force which the grievor applied in slamming the door. Given his prior record of discipline for misconduct which was plainly related to issues of anger control, I do not consider that the twenty-five demerits assessed against him was excessive in the circumstances.

For the foregoing reasons the grievance is dismissed.

April 18, 2011

(signed) MICHEL G. PICHER
ARBITRATOR