

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4073**

Heard in Montreal, Thursday, 15 December 2011

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The 3-day suspension assessed against M. Saliba following an incident on May 10, 2011.

JOINT STATEMENT OF ISSUE:

On May 10, 2011, the grievor, M. Saliba, was involved in an incident while at work which resulted in customer complaints. Following an investigation and statement held on May 20, 2011, the Company issued a letter of discipline, dated June 6, 2011.

The Union appealed the discipline as unwarranted and inappropriate and requested the Company remove the discipline from the employee's record and redress all loss of wages and benefits.

The Company agreed to reduce the suspension to two (2) days on August 8, 2011 however declined the Union's request to removing discipline from the employee's record entirely.

**FOR THE UNION:
(SGD.) G. MACPHERSON
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) D. MACHELL
GENERAL MANAGER**

There appeared on behalf of the Company:

M. Horvat	– Counsel, Toronto
A. Brown	– Manager, Human Resources, Toronto
D. Machell	– General Manager, Toronto
S. Seth	– Supervisor, Human Resources, Toronto

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
G. MacPherson	– General Chairman, Toronto
M. Saliba	– Grievor

AWARD OF THE ARBITRATOR

With respect to this grievance there is no substantial dispute as to the facts. The grievor was serving as the Customer Service Ambassador (CSA) on GO Train 439 on the morning of May 10, 2011. When his train was in Whitby Station and he was stationed at the ramp accessible car, Mr. Saliba was in the process of re-entering the train and closing the door, having removed the access ramp. As he entered the car a late arriving female passenger stepped onto the car behind him. It does not appear disputed that he turned and blocked her access to the car, advising that she could not then board. She was returned to the platform, the door was closed and the grievor's train proceeded. It appears that some three other passengers, who were also on the platform, who observed what occurred, sent email complaints to the Company describing what they characterized as rude and discourteous service by the grievor.

Following an investigation the grievor was assessed a three day suspension. The letter of notification, dated June 6, reads, in part, as follows:

The results of this investigation have been reviewed and it has been determined that by not deploying the ramp for a last minute customer you failed to exercise the good judgement that is required of you as a Customer Service Ambassador. Blocking a customer who was right at the door is an extremely poor and reprehensible course of action to take in your position, not to mention that it directly affects the reputation of GO/BTNA.

The Company stresses that the very fact incident which gave rise to this discipline was addressed in the grievor's charter training, something he had apparently undergone on September 18, 2010. It appears that one of the scenarios presented to employees during that training is a letter of commendation received from a passenger who relates that his family was allowed to board a GO train after the doors were closed. It would appear that the CSA manning the ramp door saw them and re-opened the door and deployed the ramp to allow the family to board, thereby avoiding them missing their train. In the Company's submission the grievor should have been expected to do likewise with respect to the passenger who attempted to board his train at Whitby. It submits that rather than refusing the passenger access he should simply have redeployed the ramp and allowed her to board GO train 439.

Counsel for the Union submits that the grievor was in a difficult situation and had to make a judgement call. He stresses that it was rush hour, that his train had some five hundred passengers and that adding any delay to his train could cause some of them to be unhappy, and possibly to miss a connection. Counsel submits that the grievor in fact did nothing wrong or, in the alternative, that his actions should have attracted no more than corrective counselling.

Having carefully reviewed the evidence the Arbitrator has difficulty with the position advanced by the Union, on the particular facts of this case. While I acknowledge that there may be situations in which an employee should be given the latitude to make a judgement call, the fact remains that the actions of the grievor in the

instant case prompted at least three passengers other than the lady who was refused access to communicate unsolicited complaints to the Company over the incident they witnessed. I am satisfied, on the balance of probabilities, that, whether deliberately or not, the grievor conveyed a degree of indifference and abruptness towards the passenger in question which was not of an acceptable standard for an employee directly involved in passenger interface in the service of a public carrier. I am satisfied that the grievor's actions did constitute a form of discourtesy which justified the assessment of discipline.

As a general rule arbitrators tend not to "fine tune" the length of a discipline if the discipline awarded is judged to be within the appropriate range of penalty for the impugned actions of the employee. In the instant case, however, I believe there are mitigating factors which would justify a different approach. Firstly, it should be noted that the grievor, hired in 2008, had never previously been disciplined. Secondly, in my view, the stress of the rush hour situation in which the grievor found himself, and the need to make a judgement call in a short time, can fairly be viewed as a mitigating factor to be taken into account. While these elements do not justify the grievor's actions, they should be given mitigating value in assessing the appropriate penalty.

Bearing in mind that the purpose of discipline is to communicate for the purposes of promoting rehabilitation, I am satisfied that a one day suspension would have been amply sufficient in the circumstances to convey to Mr. Saliba the need to be more courteous and/or generous in dealing with late arriving passengers. The grievance is

therefore allowed, in part. The Arbitrator directs that a one day suspension be substituted for the two day suspension assessed against the grievor. He shall be compensated for the difference in all wages and benefits lost.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR