

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

CASE NO. 4310

Heard in Montreal, May 13, 2014

Concerning

VIA RAIL CANADA

And

UNIFOR

DISPUTE:

1. The assessment of 25 demerit marks on Mr. Serge Lafreniere for being involved in a physical altercation with another fellow employee on September 24, 2011.
2. The assessment of 10 demerit marks on Mr. Serge Lafreniere for refusing to obey the orders of both the security officer and a manager of the TSO on October 26, 2011.
3. The assessment of 30 demerit marks on Mr. Serge Lafreniere for soliciting money from a customer on September 14, 2012.
4. The assessment of 60 demerit marks on Mr. Serge Lafreniere for physically assaulting a customer on September 14, 2014 which is an infraction committed in violation of the Code of Conduct and Violence in the Workplace policies and the subsequent termination of the employee for an accumulation of demerit marks.

COMPANY'S EXPARTE STATEMENTS OF ISSUE:

1. Following an investigation held on September 28, 2011, a decision was made to impose 25 demerit marks on Mr. Serge Lafreniere. The Corporation is of the opinion that the disciplinary assessment was appropriate. As per the Code of Conduct and the Workplace Violence Prevention policies, the Employer is committed to providing all employees in the workplace with an environment free of violence. The employee clearly contravened both policies when he assaulted a co-worker by pushing him out of his own office.
The Union submitted that the assessment of the demerit marks was excessive and unwarranted.
The Corporation contends that the disciplinary measure was imposed and based on all evidence submitted.
2. Following an investigation held on November 28, 2011, a decision was made to impose 10 demerit marks on Mr. Serge Lafreniere. The Corporation is of the opinion that the disciplinary assessment was appropriate. Indeed, Mr. Lafreniere entered the Montreal Maintenance Center on October 28, 2011, with a dog in his hands and ignored the orders

from several management and security representatives not to enter and to leave the premises for health and safety reasons.

The Union submitted that the discipline was inappropriate.

The Corporation contends that the disciplinary measure was justified based on all evidence submitted as well as the applicable policies, namely the Code of Conduct, as well as the Health and Safety policy.

3. Following an investigation held on September 21, 2012, a decision was made to impose 30 demerit marks on Mr. Serge Lafreniere who was occupying the position of Red Cap at the time of the event. The Corporation is of the opinion that the disciplinary assessment was appropriate. Mr. Lafreniere's main duties was to provide assistance to passengers with disabilities or mobility issues as well as those requiring baggage service, free of charge. As such, soliciting tips was not permitted. Indeed, Mr. Lafreniere solicited money from a customer on September 14, 2012, when carrying a customer's bag and subsequently threatening this same customer to take the bag back into the station should the customer refuse to pay Mr. Lafreniere for services rendered by way of gratuity or tip.

The Union submitted that the assessment of the demerit marks was excessive and unwarranted.

The Corporation contends that the disciplinary measure was justified based on all pieces of evidence submitted.

4. Following an investigation held on September 21, 2012, a decision was made to impose 60 demerit marks on Mr. Serge Lafreniere. The Corporation is of the opinion that the disciplinary assessment was within the acceptable range of discipline for this type of infraction. There is undisputed evidence showing that Mr. Lafreniere physically assaulted a customer when he grabbed a customer's bag and pushed him away after the latter tried to recuperate his bag.

The Union disagrees with the Employer's position and finds that the discipline was excessive and unwarranted.

The Corporation contends that Mr. Lafreniere was terminated for an accumulation of demerit marks and that the said termination was more than justified based on the evidence submitted.

**FOR THE UNION:
(SGD.)**

**FOR THE COMPANY:
(SGD.) M. Boyer
Senior Advisor, Employee Relations**

There appeared on behalf of the Company:

M. Boyer	– Labor Relation Senior Advisor, Montreal
B. Blair	– Senior Advisor Employee Relations, Montreal
C. Bergeron	– Senior Manager, Customer Experience, Montreal
C. Robert	– Manager, Customer Experience, Montreal
S. Hamelin	– Responsible Gare Central, Montreal
I. Kluka	– Manager, Call Centre, Montreal

There appeared on behalf of the Union:

R. Fitzgerald	– National Staff Representative, Toronto
M. Germain	– National Representative, Montreal
S. Auger	– Quebec Regional Representative, Montreal
M. Laroche	– President Local 4004, Montreal
S. Lafreniere	– Grievor, Montreal

AWARD OF THE ARBITRATOR

This grievance involves four separate heads of discipline. The first relates to the assessment of twenty-five demerits for the grievor's alleged involvement in a physical altercation with another employee. Ten demerits were assessed against the grievor for insubordination. He further received an additional ninety demerits in relation to one incident. Thirty of those demerits are for his allegedly having solicited tips from a customer and, finally, sixty demerits for having assaulted that same customer.

I deal firstly with the assessment of twenty-five demerits for the grievor's alleged fight with another employee. The events in question occurred on September 24, 2011. It appears that the grievor entered the office of employee Stephen Hamelin to obtain some form of paper or documentation. Subsequently, when Mr. Hamelin recalled the grievor to his office to clarify his plans in respect of not attending work the following day, the two apparently became involved in a pushing match in Mr. Hamelin's office doorway. According to Mr. Hamelin's report of the event the grievor succeeded in entering his office where he administered what Mr. Hamelin describes as one kick and two blows with his arms or fists. It appears that the two individuals in questions were previously involved in an intimate relationship.

After a subsequent investigation both the grievor and Mr. Hamelin were assessed penalties of twenty-five demerits. The Arbitrator can see no basis upon which that penalty should not be viewed as appropriate. It is trite to say that there is no place for physical violence in the workplace (e.g. **CROA 1843, 2422**). In reviewing this

incident I do not consider it insignificant that it appears that it was the grievor who forced himself into Mr. Hamelin's office, apparently for the very purpose of visiting some form of physical aggression upon him.

I next consider the assessment of ten demerits for insubordination. The incident in question occurred on October 26, 2011. It appears that the grievor entered the telephone sales office, when he was off duty, carrying a small dog. Team leader Lucy Moro then said to him that dogs were not allowed in the office. It does not appear that she said anything more, nor does it appear disputed that the grievor effectively disregarded her comment, indicating that he was simply coming to drop off a key with another employee. Subsequently, Ms. Moro contacted office manager Kluka who attended at the location and effectively took Mr. Lafreniere out of the office, directing him to stay in the hallway so that the employee in question could be summoned to receive the key. Subsequently, following an investigation, the grievor was assessed ten demerits for what was qualified as his insubordinate behaviour in relation to that incident.

The Arbitrator cannot agree that insubordination is made out on the facts disclosed. There is no suggestion that Mr. Lafreniere ever refused to do what he was told. The fact that Ms. Moro made an observation that dogs were not permitted on the premises is, in my view, something less than a managerial directive aimed at Mr. Lafreniere, being more in the nature of a general observation. On the whole, I am satisfied that there was no basis to assess discipline for insubordination upon the

grievor as regards the incident of October 26, 2011. The Arbitrator therefore directs that the ten demerits be removed from the grievor's record.

The main substance of this case involves the assessment of thirty demerits for soliciting a tip from a customer, and sixty demerits for assaulting the same customer, which resulted in the termination of the grievor's employment. The incident in question occurred on September 14, 2012. On that day the grievor carried a bag for an AMTRAK passenger from the train's platform to the taxi boarding area at Central Station in Montreal. Upon a careful review of the evidence, I am satisfied that upon reaching the taxi stand the grievor told the passenger that it was customary to provide a tip for his service. It appears that the passenger, who was then being met by female friend who was exiting her car, indicated that he did not have any money. The passenger then spoke briefly with his female companion and returned to advised that she had no money either. It does not appear disputed that at that point the grievor effectively attempted to pick up the passenger's suitcase and carry it back into the station, presumably to where he had first taken it. Seeing Mr. Lafreniere picking up his bag and walking away, the passenger reached out and attempted to retrieve the bag, and in doing so touched Mr. Lafreniere. The latter turned in anger and placed his hands upon the customer, uttering words to the effect that he had no right to touch him. The account of a security guard, which I accept as fair and accurate, relates that in fact the grievor grabbed the passenger's sweater with both hands at chest level, pulled him towards him and shouted "You don't get to touch me." After which he pushed him back with both hands, and Mr. Lafreniere left to re-enter the station.

The account of security guard Sebastien Painchaud, which I accept as accurate, relates that the grievor indicated to him that he had told the customer in question that he should give him a tip. It appears, according to what the grievor related to the security officer, that the passenger then indicated that he had no money other than Australian currency, which apparently prompted the grievor to pick up the bag and turn back towards the station, in an apparent gesture to effectively undo the service which he had just provided.

Upon a careful review of the relatively extensive evidence presented, I am compelled to conclude that the Corporation is correct in its determination firstly, that the grievor inappropriately solicited a tip from the customer in question and, secondly, that he did in fact assault him, in a manner that was clearly unnecessary in all of the circumstances.

What of the amount of discipline assessed? In a service industry it is difficult to imagine a more egregious form of misconduct than the assault of a customer. In the instant case the assault occurred because the grievor, in my view quite inappropriately, was attempting to return the customer's suitcase to some location within the station, in a manner that was plainly unauthorized and inappropriate. It is therefore not surprising that the customer made an attempt to physically wrest the bag away from the grievor, prompting the latter to effectively assault him. In my view there can be simply no excuse for the grievor's conduct in that regard. Nor can I dispute the Corporation's concern with

respect to the fact that the grievor did verbally solicit a tip from the customer in question. While Corporation guidelines do indicate that employees are free to indicate that if customers wish to give a tip it is entirely at their discretion, the grievor's attitude and statements went well beyond that general guideline. Effectively, he as much told the customer that if he did not tip him he would simply return the bag to the point where he had picked it up. It is difficult to imagine a course of conduct more calculated to undermine the Corporation's image and goodwill with the public.

In all of the circumstances I am not prepared to entertain a reduction of penalty for either the soliciting of the tip from the customer or the physical assault which occurred.

For the foregoing reasons the grievances are allowed, only in part. For the reasons touched upon above, the ten demerits assessed against the grievor for his presence in the office with his pet dog and his alleged insubordination is to be removed from his record. However the assessment of twenty-five demerits in relation to his fight with Mr. Hamelin, thirty demerits for soliciting a tip and sixty demerits for assaulting a customer must, in my view, remain undisturbed. This is therefore not a case where any order for reinstatement can be considered.

May 20, 2014

MICHEL G. PICHER
ARBITRATOR