CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1661

Heard at Montreal, on Thursday, June 11, 1987

between

VIA RAIL CANADA INC.

and

THE CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT
AND GENERAL WORKERS

DISPUTE:

Dismissal of Paul Valcourt, Telephone Sales Agent.

JOINT STATEMENT OF ISSUE:

Following an investigation on March 20, 1986, Mr. Valcourt's record was assessed 20 demerit marks for having disrupted client services while on duty and for being disrespectful to his Supervisor in the presence of fellow employees on March 18, 1986.

The assessment of 20 demerit marks, when added to the previous discipline, resulted in Mr. Valcourt's discharge on account of accumulation of 70 demerit marks.

The Brotherhood appealed the discipline maintaining that it is unfair and that Mr. Valcourt should be reintegrated with compensation for time lost.

The Corporation rejected the appeal.

FOR THE BROTHERHOOD:	FOR THE CORPORATION
(Sgd.) T. McGRATH	(Sgd.) A. D. ANDREW
NATIONAL VICE-PRESIDENT	DIRECTOR, LABOUR RELATIONS

Representing the Corporation:

M. St-Jules	- Manager, Labour Relations, Montreal
C. Pollock	- Officer, Labour Relations, VIA Quebec
J. Letellier	- Officer, Human Resources, VIA Quebec
P. Masson	- Supervisor, Sales and Services, VIA Quebec
G. Roy	- Manager, Human Resources, VIA Quebec
C. Thomas	- Officer, Human Resources, VIA Atlantic

Representing the Brothehood:

G. Cote	- Regional Vice-President, Montreal
J. Brown	- Accredited Representative
J. L. Desrochers	- Local Chairperson
P. Valcourt	- Grievor

AWARD OF THE ARBITRATOR

At the start of the hearing, the plaintiff, Mr. Valcourt, objected to the fact that the Corporation's submission would be in English. Since this Office had received no prior request either from the union or from Mr. Valcourt that the hearing be held entirely in French, the Arbitrator discussed the matter with the representatives of the employer and of the union to reach an agreement. Following this consultation, the representative of the employer, who was bilingual, offered to read his submission paragraph by paragraph first in English, followed by his own translation in French. This appeared acceptable to the plaintiff who indicated, after several paragraphs had been read and translated, that he would agree to a reading in English only, provided he be allowed to request clarification if necessary. The employer's submission was completed in this manner without objection on Mr. Valcourt's part. The union's submission, the testimony of the seven witnesses, including the plaintiff, and the closing argument by both parties were made entirely in French. The plaintiff and his union representative accepted this procedure and expressed no further objections.

The testimony established that on March 18, 1986 the plaintiff was employed as a Telephone Sales Agent. The Arbitrator accepted the testimony of Mr. Pierre Masson, the plaintiff's supervisor, that while he was listening on the supervisor's console he had seen and heard the plaintiff hang up on a customer. When Mr. Masson attempted immediately to request an explanation from the plaintiff, a heated discussion ensued in the course of which Mr. Valcourt denied having hung up on the customer. The Arbitrator is forced to conclude that during this exchange the plaintiff was disrespectful and insubordinate to his supervisor. Although the testimony failed to establish that Mr. Valcourt had called Mr. Masson a "liar, idiot and son-of-a-bitch", as the Corporation alleged, the evidence is overwhelming that Mr. Valcourt's tone and attitude towards his supervisor ahd been unacceptable and that his words and actions had greatly disturbed the atmosphere of the Telephone Sales office.

At the time of the incident, Mr. Valcourt, an employee of the Corporation since 1980, had 50 demerit marks on his file. These were accumulated entirely as a result of lateness in 1984 and 1985. Despite his precarious situation, Mr. Valcourt does not appeal to have been involved in any previous disciplinary action for having hung up on a customer or for disrespect to his supervisor.

For the reasons cited above, the Arbitrator is forced to conclude that Mr. Valcourt's actions on March 18, 1986 deserve severe disciplinary action. The only question is whether the imposition of 20 demerit marks and the dismissal of Mr. Valcourt were justified under the circumstances. In view of the absence of a similar incident in the past, the Arbitrator considers that the plaintiff deserves a second change, and that the substitution of a substantial period of suspension, without compensation or benefits, should have a rehabilitative effect on the plaintiff. If this judgement should prove mistaken and a similar incident occurs in the future, the most severe consequences for the plaintiff are inevitable.

For these reasons, Mr. Valcourt shall be reinstated, with no loss of

seniority, and without compensation or benefits for the period between his dismissal and his reinstatement. Mr. Valcourt's disciplinary file shall show 50 demerit marks on the date of his reinstatement. The case shall remain before the Arbitrator for the purpose of resolving any dispute that may arise regarding the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR