

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1857

Heard at Montreal, Wednesday, 14 December 1988

Concerning

VIA RAIL CANADA INC.

And

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed Conductor C.T. Brennan of Toronto, Ontario, and claim for loss of wages on his behalf for the period February 2, 1988 to February 16, 1988 inclusive.

JOINT STATEMENT OF ISSUE:

On January 24, 1988, while Conductor C.T. Brennan was working on Train No. 68, an incident occurred at Cobourg, Ontario, between Mr. Brennan and a group of passengers boarding the train. A disciplinary investigation was held and Mr. Brennan was assessed a 15-day suspension for conduct unbecoming an employee.

The Union has appealed on the basis that the investigation into this incident and the discipline assessed were in violation of the provisions set out in Article 82 of the Collective Agreement.

The Union has also appealed the discipline alleging that it was unwarranted and severe. In addition the Union has submitted a claim under the provisions of Article 70 for the wages lost by Mr. Brennan due to this matter.

The Corporation has rejected the Union's appeal on the discipline and has declined payment of the lost wages.

FOR THE UNION:  
(Sgd) T. G. HODGES  
General Chairman

FOR THE CORPORATION:  
(Sgd) A. D. ANDREW  
Director, Labour Relations

There appeared on behalf of the Corporation:

P. J. Thivierge - Manager, Labour Relations, Montreal  
D. L. Brodie - Labour Relations Officer, Montreal  
D. Bongard - Counter Sales Agent I, Kingston  
J. P. Dupuy - Service Manager, Montreal

And on behalf of the Union:

T. G. Hodges - General Chairman, St. Catharines  
M. P. Gregotski - Vice-General Chairman, St. Catharines

D. C. Atkinson - Vice-Local Chairman, Toronto  
M. Atkinson - Observer  
C. T. Brennan - Grievor

#### AWARD OF THE ARBITRATOR

Mr. Brennan was the conductor of Via Train 68 running between Toronto and Montreal on January 24, 1988. When his train arrived at Cobourg he was met with a group of passengers returning from Cobourg to Montreal from a youth hockey tournament. It appears that on their trip from Montreal, which took place during the quiet of a weekday, the hockey group was able to be seated together in a single car. They apparently mistakenly believed that they were entitled to the same seating accommodation on their return trip which was within a much busier period, on a Sunday. It also appears that the station agent at Cobourg led the passengers to believe that that would be the case. In fact, however, the train from Toronto to Montreal was heavily booked on that day, no previous arrangement had been made by the travelling group for special seating accommodation and because of the passenger load on that run it was impossible to seat the group together in a single car.

When Mr. Brennan's train arrived in Cobourg the hockey group and their luggage, including some twenty bags of hockey equipment, were waiting on the platform. Predictably, when Conductor Brennan informed them that there was no car reserved for them and that they would have to break up and sit individually in various parts of the train, he was met with some hostility. Matters did not improve when he told the group, quite correctly, that the train did not have any facility for their baggage, and that it would have to be left at the station to be carried to Montreal on a later train.

What may be conservatively described as a heated reaction immediately ensued. The passengers were plainly in no mood to have their expectations dashed by Mr. Brennan. While the latter proceeded to the station to inquire of the station agent with respect to what had been said to the passengers, it appears that they unilaterally loaded their bags of equipment onto the train, placing it in a vestibule. When the conductor returned to the train he and another employee removed the bags from the vestibule and placed them on the platform for collection by the later train. It is not disputed that National Transportation Agency regulations prohibit the storage of luggage in that location, which serves as an emergency exit, and that Conductor Brennan was responsible for seeing that the rule was enforced.

The allegation against Mr. Brennan is that in handling this obviously volatile situation he did not demonstrate a sufficient degree of calm and diplomacy. To some degree that assertion is made out on the material before the Arbitrator. It seems undisputed that Mr. Brennan was being spoken to loudly by a number of angry people all at once. Unfortunately, betraying some impatience, in response to a passenger who requested to be spoken to in French, Mr. Brennan, a unilingual anglophone, replied to the effect that it was not necessary to speak French in Ontario. It should be noted that he is among a group of "grandfathered" conductors serving on the Montreal-Toronto run who

are not required to be bilingual. It also appears that at one point during the discussion with the passengers who were insisting on taking their luggage aboard the train Mr. Brennan replied "I'm the conductor of this train and there are no others. What I say goes and if you don't like it, you don't have to ride on it."

I am satisfied that the material reveals an error of judgement of the part of Mr. Brennan. On the other hand, it must also be appreciated that he was working in trying circumstances and that certain of his responses were given very much in the heat of the moment. While these factors do not excuse his conduct, they do, in my view, merit consideration in mitigation. It is also significant, in the Arbitrator's view, that Mr. Brennan is a conductor of some thirty-seven years' service who, it is not disputed, has never once been disciplined. I am satisfied that the grievor's length of service, the extraordinary quality of his prior record and the exceptionally difficult circumstances which confronted him on the occasion in question should be given substantial weight in this case. While the Corporation must obviously be sensitive to the qualities of tact and consideration exhibited by the members of a crew dealing with the public and must take all measures to ensure a consistent level of courteous service by its employees, I am compelled to conclude that the decision to suspend Mr. Brennan failed to give adequate consideration to the mitigating factors reviewed above, and that the Arbitrator's discretion should be exercised to reduce the measure of discipline imposed.

The grievor's record shall therefore be amended to remove the suspension, and he shall be compensated for all wages and benefits lost. If it chooses the Corporation may substitute a written reprimand in the form of a reminder to the grievor of the importance of being patient and polite when dealing with the travelling public.

I retain jurisdiction if the event of any dispute between the parties with respect to the interpretation or implementation of this award.

December 16, 1988

(Sgd.) MICHEL G. PICHER  
ARBITRATOR