CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1865

Heard at Montreal, Tuesday 10 January 1989

Concerning

VIA RAIL CANADA INC.

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The assessment of forty-five demerit marks to the record of Mr. G. Smith: thirty demerits for carrying and consuming intoxicants while on duty and fifteen demerits for undue familiarity with passengers.

JOINT STATEMENT OF ISSUE:

Following a hearing, convened under Article 24.5 of Agreement No. 2, the record of Mr. G. Smith was assessed thirty demerit marks for carrying and consuming intoxicants while on duty aboard VIA Train 4, August 4-6, 1987, and fifteen demerit marks for undue familiarity with passengers on the same train and dates.

The Brotherhood contends that the evidence adduced does not substantiate the charges against Mr. Smith, and further states that the grievor denies the charges.

The Corporation has declined the grievance at all steps of the grievance procedure.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD) TOM McGRATH	(SGD) A. D. ANDREW
National Vice-President	Director, Labour Relations

There appeared on behalf of the Corporation:

C. O. White	- Labour Relations Officer, Montreal
M. St-Jules	- Manager, Labour Relations, Montreal
J. R. Kish	- Personnel & Labour Relations Officer
M. Desaulniers	- Witness
A. Carley	- Witness

And on behalf of the Brotherhood:

A. Cerilli	- Regional Vice-President, Winnipeg
G. Smith	- Grievor

AWARD OF THE ARBITRATOR

The material establishes to the satisfaction of the Arbitrator that on two occasions during the grievor's assignment as a service attendant on Train 4 from Vancouver to Winnipeg on August 4-6, 1987 he engaged in undue familiarity with female passengers, which in one case amounted to sexual harassment.

The first incident occurred at Boston Bar, when the train was stopped in the station. As two female passengers walked past the grievor on the station platform, Mr. Smith placed his arm around the waist of one of them and gave her a kiss on the neck. This incident was witnessed by Service Manager M. Desaulniers, who testified that the female passengers concerned were not unduly disturbed, and tended to laugh the incident off. Mr. Desaulniers nevertheless verbally admonished Mr. Smith following the incident.

The more serious of the two occurrences came later in the trip. Ms. Andrea Carley was a seventeen year old passenger taking her first train trip, travelling alone from Vancouver to Rivers, Manitoba. Arrangements had been made for her to transfer from coach accommodation to a roomette. According to Ms. Carley's testimony, which the Arbitrator accepts, shortly after being assigned to the roomette accommodation she requested some writing paper of Mr. Smith, the service attendant assigned to her coach. He obtained some for her and, later, came back to her roomette and began talking to her.

Mr. Smith began almost immediately talking to the young female passenger about sex. When she said that she had a boyfriend the grievor suggested to her that he was probably having sexual relations with other females, suggesting that she should be doing the same thing, perhaps with him. During the course of the conversation, Mr. Smith went to his own roomette, directly across the hall from Ms. Carley's, from which he produced a bottle of Grand Marnier, pouring a glass for each of them. Ms. Carley states that she was extremely uncomfortable with Mr. Smith's advances, discarded the liquor when he was not observing and declined to have anything further except a soft drink.

Mr. Smith consumed his drink and continued his advances on Ms. Carley. When she told him that she was only fifteen, in an attempt to discourage him, he responded "That doesn't matter, because you're sexy". During this time he touched her hand a number of times and, finally, tried to kiss her on the lips. Ms. Carley then said that she was not feeling well and excused herself. As she did so he provided her with his business card, writing his home telephone number in Winnipeg on it with the suggestion that she should call him, saying that he would "show me a real good time."

Ms. Carley was seriously disturbed by what happened, so much so that when she reached Winnipeg she resolved to travel home by means other than the train. When she finally returned home to Vancouver, she related the incident with Mr. Smith to her father. He subsequently wrote a forceful letter of complaint to the Corporation on September 9, 1987, noting, with irony, that he had instructed his daughter that

if she had any problem on the train she should talk to the Conductor or the Porter. In Mr. Carley's words "It is truly unfortunate that the person I told her to talk to was the person who harassed her during the trip."

The second aspect of the grievance concerns the allegation that the grievor consumed alcohol while on duty as the train approached Winnipeg. In this regard the Arbitrator accepts the evidence of Service Manager Desaulniers that he personally observed Mr. Smith drinking from a bottle of Grand Marnier shortly before the train arrived in Winnipeg.

The grievor denies having made any sexual advances on Ms. Carley, claims that it was he who was kissed by the female passenger at Boston Bar rather than the other way around, and categorically denies having been in possession of any intoxicating liquor while on duty. He maintains that he collected an empty bottle of Grand Marnier from a group of passengers because the cork would be of value to him in his part time work for a Winnipeg beauty salon. Having regard to the totality of the evidence, and in particular the demeanor of Ms. Carley, Mr. Desaulniers and the grievor himself as witnesses, the Arbitrator rejects Mr. Smith's evidence completely.

Drinking while on duty, and making sexual advances to passengers of the Corporation are among the most serious of disciplinary infractions. As the letter of Mr. Carley illustrates, passengers utilizing the Corporation's rail service look to its employees as a source of help and protection during the course of their travel. It is plainly the Corporation's obligation to ensure that its passengers are at all times treated with courtesy and respect, and that its employees' relations with passengers are at all times in keeping with the highest standards of professionalism to be expected in a hospitality industry.

The grievor's conduct, especially as it relates to his acts of sexual harassment and consumption of liquor with a young female passenger travelling alone, constitutes a gross departure from those standards. Nor are there mitigating factors in this case, having regard to the grievor's prior service and the quality of his disciplinary record, which militate in his favour. The Arbitrator must therefore conclude that the imposition of fifteen demerits for undue familiarity with passengers and thirty demerits for carrying and consuming intoxicants while on duty are within the appropriate range of discipline for the conduct disclosed.

For these reasons the grievance must be dismissed.

January 13, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR