CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2045

Heard at Montreal, Thursday, 12 July 1990

Concerning

VIA RAIL CANADA INC.

And

UNITED TRANSPORTATION UNION

DISPUTE:

The assessment of 25 demerit marks to Mr. P. Ethier for permitting passengers to detrain at other than a station stop, when assigned as Conductor to Train 58 on March 20, 1989.

JOINT STATEMENT OF ISSUE:

Mr. P. Ethier was the Conductor on Train 58 on March 20, 1989 when, at approximately 0330 hours, shortly after having departed Kingston station, he was approached by two female passengers who stated that they had missed their stop. He informed them that the next stop would be Brockville and left the coach, followed by the two passengers. Shortly thereafter the train stopped, the passengers detrained and were transported back to Kingston station by another VIA passenger train.

Mr. Ethier acknowledges that he stopped the train account he suspected flat spots on the wheels of one of the coaches.

The Union appealed the discipline assessed Conductor Ethier on the grounds that Mr. Ethier did not receive a fair and impartial investigation, as provided for in Article 82.2 and therefore the discipline should be removed from his record. The Union also appealed the discipline as being too severe if not unwarranted.

The Corporation denied the Union's appeal and stated that the provisions of Article 82.2 were complied with and declined to remove the discipline.

FOR THE UNION:	FOR THE CORPORATION:
(SGD) M. P. GREGOTSKI	(SGD) P. J. THIVIERGE
for: GENERAL CHAIRPERSON	ACTING DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor	- Senior Labour Relations Officer, Montreal
M. St-Jules	- Senior Negotiator & Advisor, Labour Relations, Montreal
B. Abbott	- Trainmaster, Toronto

And on behalf of the Union:

M. P. Gregotski - Vice-General Chairperson, St. Catharines
G. Bird - Vice-General Chairperson, VIA, Montreal

AWARD OF THE ARBITRATOR

The Arbitrator accepts that Conductor Ethier erred in number of respects on March 20, 1989 when he allowed two passengers to leave his train in a dark and isolated section of Kingston. On balance I do not accept the account of Mr. Ethier that he stopped the train three minutes after leaving the Kingston station, where he had the fullest opportunity to inspect the car wheels in respect of which he says he had concerns. I am satisfied, on the balance of probabilities, that he stopped the train to allow the two passengers to detrain because they had, during the three minute interval between the station and the stop, vociferously expressed their wish to do so.

It does not appear disputed that the proper course would have been for Mr. Ethier to allow the passengers to detrain at Brockville, and that the possibility of arranging return passage by taxi was a genuine alternative. While this may not have been the passengers' first wish, a conductor in charge of the movement of a passenger train has a larger responsibility as regards the efficiency and safety of operations. It is difficult to dispute the Corporations's characterization of the danger which the two passengers were placed by being allowed to detrain in an isolated area, in double track territory, in snowy and icy conditions at 0330 hours. While the Arbitrator is not inclined to assign the same weight as does the Corporation to the fact that the conductor might have been alerted to the fact that two scheduled passengers had not detrained at Kingston by means of a more diligent passenger count, I am in agreement that his failure to subsequently report the unscheduled detraining, which is arguably an "unusual condition" within the meaning of UCOR Rule F, is also a factor which weighs against him.

On the whole the Arbitrator is satisfied that in the circumstances of this case the assessment of twenty-five demerits falls within the appropriate range of discipline. For these reasons the grievance must be dismissed.

July 13, 1990 (Sgd) MICHEL G. PICHER
ARBITRATOR