

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2046

Heard at Montreal, Thursday, 12 July 1990

Concerning

VIA RAIL CANADA INC.

And

UNITED TRANSPORTATION UNION

DISPUTE:

The restriction of Mr. N.M. Stadnyk of Toronto, for 24 consecutive months from occupying a position on a train carrying passengers and time out of service from September 21 to October 3, 1989, to count as suspension for permitting an elderly and handicapped passenger to detrain at other than an authorized station stop in violation of Items 4.10.4, 2.2 and 4.11.1 of General Instructions to Passenger Train Conductors, VIA 85-M0003 (89-04) while employed as Conductor, Train 668, September 18, 1990.

JOINT STATEMENT OF ISSUE:

Mr. Stadnyk was the Conductor on Train 668 on September 18, 1989. Shortly after having departed Guelph, he was informed by another crew member that one of the passengers had failed to detrain at Guelph. The passenger was elderly and handicapped had been pre-boarded at London due to his handicap.

Mr. Stadnyk spoke with the passenger after having being (sic) so informed and offered him the option of continuing to the next scheduled stop or to detrain at a level crossing. The passenger opted to detrain at a level crossing whereupon Mr. Stadnyk signalled to stop the train and detrained the passenger.

On September 25, 1989, Mr. Stadnyk attended a disciplinary investigation and was subsequently disciplined for this incident.

The Union appealed the discipline assessed Conductor Stadnyk on the grounds that there were mitigating circumstances and that the discipline assessed was too severe, if not unwarranted. Also the Union requested that Mr. Stadnyk be compensated for all time lost while held out of service.

The Corporation's position is that the discipline is justified and has denied the Union's requests.

FOR THE UNION:

(SGD) M. P. GREGOTSKI

FOR THE CORPORATION:

(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. Cathari
G. Bird	- Vice-General Chairperson, VIA, Montre
N. M. Stadnyk	- Grievor

#### AWARD OF THE ARBITRATOR

On September 21, 22 and 23, 1989 the Toronto news media reported, with obvious editorial rancour, that a blind man been ejected from a passenger train at a level crossing east of Guelph after he had slept through his stop. The Toronto Star and the Toronto Sun reported, without any apparent attempt to confirm their story, that a 76 year old blind war veteran, Walter Pettifer, was left standing by the roadside in a remote location, with only his white cane and \$5.00 given to him by the train's conductor. Mr. Pettifer reported to the press, which apparently did not question his story, that the conductor had demanded his ticket, and seeing that he had passed his stop, pulled the emergency cord and ejected him from the train. According to the account in the Toronto Star, Mr. Pettifer related that he asked the conductor if he could not stay on until the next stop in Georgetown, but without any effect. These reports surfaced in the press at a time when the Corporation already under a degree of negative media attention in relation to proposed government-initiated cuts in its routes nationally. It is not surprising, therefore, that the employer would register a substantial degree of concern in respect of the adverse publicity involved in the reported incident at Guelph.

The facts, however, are starkly different. After extensive investigation, the uncontradicted facts before the Arbitrator disclose that what the press reported was a serious distortion of what occurred, apparently created by Mr. Pettifer for reasons which only he can explain. Firstly, Mr. Pettifer does have degree of blindness, but he is partially sighted. Without minimizing his visual impairment, it is not disputed that he is able to recognize buildings and places, and to move about without substantial difficulty, although he does carry a white cane. Secondly, and perhaps most significantly, the account of the events which he related to the press is clearly false. Shortly after the newspaper reports two passengers who were witnesses to what transpired wrote letters to the Corporation in defence of Conductor Stadnyk. The letter of passenger Deborah Lawton relates the following:

On Monday, September 18, 1989, I travelled on train no. 668 from Kitchener to Toronto. I boarded at Kitchener with a baby and occupied a seat on the right-hand side of the front car, which was the no-smoking car. Immediately across from me, a woman was seated, ahead of her was an elderly gentleman and ahead of me was another woman.

Shortly after leaving Guelph, a young Conductor came by and asked the elderly gentleman for his ticket and asked where he was going. The elderly gentleman said he was getting off at Guelph and was informed the train was by Guelph and on its way to Georgetown. The Conductor then left and an older Conductor with white hair came back to the man. He said to him that he could continue to go to Georgetown or he could be let out. The elderly gentleman said he did not want to go to Georgetown and preferred to get off. He stood up and the Conductor gave him \$5.00 and said that should cover the taxi.

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The reason for my letter is simply to clarify that the elderly gentleman was certainly given a choice and he elected to get off at the crossing and was not thrown off as he has been reported as stating.

The second letter, from Mrs. Ellen Balkan gives, in part, the following account:

I was a passenger on the train in which the elderly gentleman was let off at a railway crossing east of Guelph on Monday, September 18, 1989. The reason for my letter is to advise you that the circumstances are a wee bit different from that being reported by the gentleman.

I got on the train at Stratford going to Toronto, and took a seat on the left-hand side of the first car, which was the no-smoking car. This seat was immediately behind the seat being occupied by the elderly gentleman in question.

After we left Guelph, I would say maybe a couple of minutes, the Conductor came along and asked this gentleman where he was getting off and he said that he was getting off at Guelph. I had no difficulty hearing the conversation as it was right in front of me. The Conductor said that he was afraid that we had just passed Guelph and he asked the elderly gentleman if he lived on the east side or west side of Guelph.

The gentleman couldn't answer, he did not know, so the Conductor said we are on our way to Georgetown. The Conductor asked him if he would like to get off here or go to Georgetown. The elderly gentleman said that he certainly did not want to go to Georgetown.

The Conductor was being courteous and trying to be nice and said if you like I can let you off here and you can go to the highway and get a taxi. The elderly gentleman said to the Conductor that he would rather do that. He stood up and the Conductor

then handed him \$5.00 and said this should take care of the taxi.

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From what I saw, the Conductor was endeavouring to accommodate the elderly gentleman and while he may have used poor judgement, he certainly did not have the elderly gentleman thrown off the train. He should not have allowed him to get off between stops and should have taken him to Georgetown to be looked after by VIA personnel.

The account of events obtained through the Corporation's investigation, and in particular the statement of Conductor Stadnyk confirms, beyond any controversy, that the accounts related by the two passengers fairly describe what occurred. In essence, therefore, what transpired is that Conductor Stadnyk, an employee with twenty-six years of service in railroading whose disciplinary record over that period is close to exemplary, did not eject the passenger in question from the train. Rather, he indicated to Mr. Pettifer that he could detrain at Georgetown and return to Guelph, an option which the passenger did not wish to accept. Having regard to the passenger's own preference, he allowed him to leave the train at a level crossing east of Guelph, walked with him to the highway and, without any requirement to do so, gave him \$5.00 from his own pocket, and not from Corporation funds, to permit him to call a cab.

The disciplinary response of the Corporation has, by any standard, been harsh. Having been suspended from passenger service for a period of two years, the grievor has lost potential earnings in the range of \$1,600.00 per month and, additionally, was held out of service from September 21 to October 3, without pay. Because of the financial hardship involved, the grievor was forced to return to CN Rail in April, in an effort to increase his earnings in anticipation of the fact that he may be pensionable within five years.

In the Arbitrator's view it cannot be disputed that Mr. Stadnyk made an error of judgement in allowing a passenger, particularly one who is elderly and vision impaired, to leave a train in other than a station, as he did. His actions are perhaps best characterized in the comment of passenger Balk that in allowing the elderly gentleman to pursue his preference to leave the train, Mr. Stadnyk did exercise poor judgement. While it is arguable that the elderly passenger might have complained to the press just as vociferously if he had been forced to remain aboard until the train reached Georgetown, in that event the Corporation's image and interests would have been more easily defensible.

The Corporation rule is that passengers are not to detrain other than at stations. The Union submits that the reality of everyday practice is otherwise. It argues that it is not uncommon for passengers to miss their stop, and for Conductors to be forced to make an on the spot decision as to whether they should be permitted to detrain at the next convenient opportunity, usually a nearby level crossing. It submits that this arises particularly when the passengers express a strong desire to do so. It is not necessary for the purposes of this award to comment on the general rule or the apparent problems

encountered in the field. Suffice it to say that, if one accepts the Corporation's position as to the importance of the rule, in past cases where similar facts are disclosed, the degree of discipline assessed by the Corporation has been substantially less harsh than the punishment meted out to Conductor Stadnyk. The Arbitrator was advised of a similar incident involving another conductor who allowed passengers to detrain at a level crossing shortly after they had missed their stop. In that instance a letter of reprimand was issued. In another case, CROA 2045, a conductor who allowed two young ladies to leave his train in an isolated section of Kingston minutes after they missed their station stop, was assessed twenty-five demerit marks. The aspects of danger in that incident, which involved leaving the train at 0330 hours in dark, snowy conditions in a busy double track area are arguably comparable to the safety considerations in the instant case.

The Arbitrator readily understands the embarrassment suffered by the Company as a result of the adverse publicity generated by the sensational and dubious journalism of which it was the victim. It is difficult, however, to reject the submission of the Union to the effect that the grievor emerged as something of a scapegoat in this unfortunate affair. As a long service employee with a good record, he, like any employee is entitled to have the measure of discipline applied to him assessed on a fair and consistent basis, devoid of extraneous and distorting factors such as the false accusations of a strident press. While it may be that an enterprise in the position of the Corporation must, on occasion, suffer the buffeting of unfair accusations levelled in the public eye, its employees should not be made undeserving victims. The just provision of the Collective Agreement is intended to ensure that the discipline assessed against them is based on a fair and dispassionate analysis of the facts coupled with the application of penalties that are consistent on a case to case basis.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator accepts that Conductor Stadnyk did exercise poor judgement in allowing the elderly passenger to pursue his own wish to detrain at a location other than a station. There can be little doubt that he did so in contravention of the general rule to the contrary. He was, therefore, liable to some discipline. Having regard to his treatment, however, I am compelled to conclude that the failure of the Corporation to compensate Mr. Stadnyk for the period for which he was held out of service particularly after the true facts became known to it, cannot be supported. I am likewise satisfied that there is no basis disclosed upon which he should have been removed from passenger service or deprived of the opportunity to maintain his normal earnings. The discipline appropriate in the circumstances of his case should not, in my view, differ substantially from that issued to other conductors for similar infractions of the rule.

The grievor shall therefore be reinstated into his employment, without loss of wages or benefits, and without loss of seniority, with an assessment of twenty-five demerits to be substituted for the purposes of his disciplinary record. While it appears that there may be some issue as to the quantum of compensation, in relation to the duty of mitigation, that is a matter upon which the parties may return to the Arbitrator should they be unable to reach agreement.

July 13, 1990

(Sgd) MICHEL G. PICHER  
ARBITRATOR