

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2823

Heard in Montreal, Tuesday, 11 February 1997

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Appeal of discipline assessed Conductor W. Kruize.

EX PARTE STATEMENT OF ISSUE:

On June 28/95 W. Kruize was the conductor on train 67. Seventy-nine days after this tour of duty, Mr. Kruize was required to provide an employee statement in connection with this tour of duty (June 28/95). Subsequent to the employee statement, Mr. Kruize was assessed a 30 day suspension "for being discourteous and rude towards customers while assigned as conductor on train #67 on June 28, 1995."

The Union appealed the discipline assessed as being unwarranted or in the alternative too severe. It is also the position of the Union that the Corporation has violated the provisions of article 73 of agreement 12 by not holding a timely investigation.

FOR THE UNION:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. Houlihan	– Senior Officer – Contracts, Labour Relations, Montreal
D. Trubiano	– Senior Officer, Labour Relations, Montreal

And on behalf of the Union:

G. E. Bird	– Vice-General Chairman, Montreal
W. Kruize	– Grievor
N. Thomas	– Grievor

AWARD OF THE ARBITRATOR

The facts relating to this grievance are generally outlined in **CROA 2822**. The Arbitrator is satisfied, on the balance of probabilities, that Conductor Kruize was called to deal with a problem being experienced by Assistant Conductor Thomas, who encountered resistance by passengers objecting to his request to turn a seat into the forward direction. The letters of complaint, which the Arbitrator accepts as accurate, relate that upon arriving at the scene Conductor Kruize immediately advised the passengers in question that if they did not comply with Mr. Thomas' request he would put them off the train at the next stop, Cornwall. When the passengers asked his name, Conductor Kruize declined to provide it, merely indicating to them the train and coach number of his assignment.

I am satisfied that Conductor Kruize was overly authoritarian in his initial approach to the passengers in question, and that he did fail to exercise the degree of courtesy expected of a conductor in such a circumstance. The threat of expulsion from the train, made almost immediately upon the conductor's encounter with the passengers, should obviously have been a statement of last resort, and not one of introduction. Further, for the reasons touched upon in **CROA 2822**, the grievor's refusal to give his name when asked tends to support the view of the complaining passengers that he himself felt that his conduct had placed him in a vulnerable position.

However, there are, in the case of Conductor Kruize, mitigating factors which must be considered. Among them is the delay between the incident and the first indication from the Corporation to the grievor that a complaint had been received. It does not appear disputed that more than two months elapsed before Mr. Kruize received any notice that his conduct had been objected to. The Arbitrator cannot, therefore, dismiss out of hand his answers given at the disciplinary investigation, to the effect that he had no recollection of the incident. Further, the grievor is a long service employee, having been first hired by CN Rail in July of 1962. He has never been disciplined for being discourteous or rude towards customers in the past, and his disciplinary record was clear at the time of the incident. In the circumstances, even allowing for some degree of deterrence of other employees, the Arbitrator is satisfied that the assessment of a thirty day suspension was unduly harsh in the circumstances.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor's record be amended to reflect a two week suspension for the incident in question, and that he be correspondingly compensated for wages and benefits lost.

February 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR