

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3016**

Heard in Montreal, Thursday, 10 December 1998

concerning

**VIA RAIL CANADA INC.**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

**DISPUTE:**

The assessment of 30 demerits to the record of Mr. A. Osborne.

**JOINT STATEMENT OF ISSUE:**

On November 5, 1996, the Corporation received a letter of complaint from a customer and concerning an alleged incident with the grievor on October 13, 1998. An investigation into the alleged incident was not held until February 10, 1997, some four (4) months after the alleged incident.

It is the Union's position that the investigation was not a fair and impartial hearing as contemplated in articles 24.1 and 24.2 of collective agreement no. 1. Given the extreme delay in the proceedings the discipline must be considered a nullity and expunged from the grievor's record. It is further the Union's position that the discipline assessed is exceedingly harsh and unwarranted in the circumstances.

The Corporation denies any violation of the collective agreement and maintains that the discipline was justified under the circumstances.

**FOR THE UNION:**  
(SGD.) **R. JOHNSTON**  
**PRESIDENT**

**FOR THE CORPORATION:**  
(SGD.) **E. J. HOULIHAN**  
**FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

E. J. Houlihan	- Senior Manager, Labour Relations, Montreal
C. Pollock	- Senior Officer, Labour Relations, Montreal
L. Laplante	- Officer, Labour Relations, Montreal

And on behalf of the Union:

D. Olszewski	- National Representative, Winnipeg
R. Bir	- Regional Representative
A. Osborne	- Grievor

**AWARD OF THE ARBITRATOR**

On the material filed the Arbitrator is satisfied that the grievor did display a lack of courtesy and consideration in dealing with an elderly couple who attempted to check their baggage at the Edmonton station on the morning of October 13, 1996. It appears that the couple had been informed by a Corporation TSO agent that they could check their Toronto bound baggage at the Edmonton station any time after 10:00 a.m. It appears that the information which was provided to them in that regard was incorrect. When they presented themselves to Mr. Osborne the grievor indicated to them that it was not possible to check in their luggage prior to 1:00 p.m. It appears that before completing his dealings with the customers he immediately telephoned the TSO and, in front of the customers began a verbal confrontation on the telephone with a member of the TSO staff, complaining about the misinformation provided to the passengers in question, and about similar misunderstandings in the past. It also appears that during the course of his speaking on the telephone to the TSO agent Mr. Osborne was being addressed by the taxi driver who had brought the elderly couple to the station, and that he repeatedly told the taxi driver to be quiet, by his own admission using the phrase "shut up" at least once. It appears from the record before the Arbitrator that the elderly couple ultimately placed their baggage in a station locker and left without any further assistance from Mr. Osborne. The grievor's conduct caused a serious letter of complaint to be filed by the couple, in the form of a letter dated October 30, 1996.

The Arbitrator is satisfied that upon a review of a report of the incident, the substance of which is not in fact denied by the grievor, there can be no doubt but that he failed to provide the necessary degree of courtesy and consideration to the couple in question. Needless to say, in a hospitality oriented industry such as that operated by the Corporation courteous dealings with the public, and particularly with paying customers, are a first priority. There was, very simply, no reason for the grievor to take up his personal differences with the OTS department in the presence of the customers, and before fully dealing with their needs in a helpful and courteous way.

The Union challenges the Corporation's action, in part, on the basis that the disciplinary investigation was conducted after some period of delay. While delay can, in some circumstances, be tantamount to depriving an employee of a fair and impartial investigation, each such allegation must be judged on its own merits. While it is true that article 24.2 of the collective agreement mandates that investigations are to be "... held as quickly as possible", regard must be had to all of the circumstances. In the instant case it does not appear disputed that the incident, which was complained against in November, was not investigated until February. It appears, however, that a shortage of supervisory staff, and the crush of the Christmas period made it difficult for local management to deal **with the complaint in a more** expeditious fashion. If the evidenced disclosed, however, that the delay did prejudice the grievor, the Union's position might succeed. On the material before me, however, there is no such suggestion. A review of the grievor's recall of the incident during

the course of the disciplinary investigation confirms that he had an extremely vivid memory of almost each and every moment of his encounter with the elderly couple and their taxi driver. Apart from his own recollection that there may have been some irregularity in the voucher which they presented, there is little significant variation in the account of events as between the grievor's rendition and the complaint made by the offended passengers. I do not find in the instant case any meaningful prejudice to the grievor by reason of the fact that the investigation was conducted February 10, 1997. Moreover, even if I should accept the grievor's characterization of the event as involving an irregular voucher, that fact would not change my view of the lack of courtesy which he nevertheless displayed toward the passengers and the taxi driver who was attempting to assist them.

The record reveals that on four prior occasions the grievor has received discipline for conduct unbecoming an employee of the Corporation and rudeness towards passengers. In the circumstances I am satisfied that the assessment of thirty demerits was justified, and that the grievance must be dismissed.

November 14, 1998

**MICHEL G. PICHER**  
**ARBITRATOR**