

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 3315**

**Heard in Montreal, Thursday, 12 December 2002**

**concerning**

**VIA RAIL CANADA INC.**

**and**

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

**DISPUTE:**

Discipline assessed Mr. Nourr Nasraoui, and his resultant discharge for accumulation of demerits.

**UNION'S STATEMENT OF ISSUE:**

Mr. Nasraoui was disciplined twice for two separate incidents involving altercations with fellow employee Mr. Patrick Zembski. He was assessed 45 demerits for an "alleged physical assault" on Mr. Zembski, November 28, 2001; and was dismissed for an "alleged physical assault" on Mr. Zembski on January 5, 2002.

It is the Union's position that the Corporation has no evidence that the incident of January 5, 2002 actually took place, except that the Corporation took the word of Mr. Zembski over that of the grievor. Furthermore, Mr. Nasraoui was truthful throughout both investigative statements and he readily admitted the first altercation. The Union contends that Mr. Nasraoui was subjected to harassment by Mr. Zembski since at least 1996 and that the Corporation allowed a poisoned work environment to flourish, contrary to its own harassment policy, resulting in the aforementioned incidents. It is the Union's position that the discipline was excessive, and unwarranted given the mitigating circumstances.

The Union requests the discipline be expunged from Mr. Nasraoui's record and that he be reinstated with full compensation for all wages and benefits lost.

The Corporation denies the Union's request.

**CORPORATION'S STATEMENT OF ISSUE:**

On Wednesday, November 28, 2001, Mr. Nasraoui was assigned as the Station Service Agent in the baggage room at Toronto Union Station. Mr. Nasraoui overheard some inappropriate remarks personal remarks spoken by his fellow employee, Senior Baggage Attendant Mr. Patrick Zembski. Mr. Nasraoui took offence and physically assaulted Mr. Zembski.

The Union submits that there were mitigating circumstances the Corporation should have considered before issuing the 45 demerits to Mr. Nasraoui.

The Corporation maintained that the discipline imposed was warranted and Mr. Nasraoui had been previously counselled on inappropriate behaviour in the workplace.

The Union grieved the assessment of discipline.

The Corporation denied the grievance at all steps of the grievance procedure.

On Saturday, January 5, 2002, Mr. Nasraoui was assigned as a red cap at Toronto Union Station. That morning Mr. Patrick Zembski, a fellow employee, stopped at the baggage area of Union Station on his day off. In front of approximately 20 VIA customers Mr. Nasraoui and Mr. Zembski engaged in a verbal confrontation which appeared to be escalating into a physical fight, yet again. The Senior Baggage Attendant, Mr. Darcy Duschêne, placed himself between the two assailants to prevent any physical violence.

For his conduct unbecoming a VIA employee Mr. Nasraoui was assessed 60 demerits which resulted in his dismissal for accumulation of demerit marks.

The Union submits that the discipline was excessive and unwarranted given the circumstances and asks that the discipline be expunged from Mr. Nasraoui's record and he be reinstated with full compensation for all wages and benefits lost.

The Corporation maintained the discipline imposed was warranted and Mr. Nasraoui had been involved in a similar altercation on November 28, 2001.

The Union grieved the assessment of discipline and subsequent dismissal.

The Corporation denied the grievance at all steps of the grievance procedure.

FOR THE UNION: FOR THE CORPORATION:

(SGD.) D. OLSHEWSKI (SGD.) L. HELLER

NATIONAL REPRESENTATIVE FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

L. Heller - Sr. Advisor, Labour Relations, Montreal

E. J. Houlihan - Sr. Manager, Labour Relations

M. Bastien - Sr. Officer, Labour Relations, Montreal

C. Watson - Customer Service Manager

And on behalf of the Union:

R. Massé - Bargaining Representative, Montreal

D. Olszewski - National Representative, Winnipeg

D. Andru - Bargaining Representative, Toronto

T. Blanchard - Local Chairperson,

P. Zembski - Witness

N. Nasraoui - Grievor

At the request of the parties the hearing was adjourned *sine dies*.