

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3392**

Heard in Montreal, Thursday, 11 December 2003

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The assessment of 5 demerits to Employee "W." for conduct unbecoming an employee.

CORPORATION'S STATEMENT OF ISSUE:

W. was investigated on July 7, 2003 regarding the events of May 8th, 2003. The Corporation alleged that she had engaged in conduct unbecoming in an interview with her supervisor in the Telephone Sales Office. As a result of the investigation, W. was assessed 5 demerits.

The Union submits that W. did not engage in any conduct deserving of discipline. They submit that the supervisor misrepresented what had occurred in the interview.

The Corporation maintains that W. had engaged in conduct unbecoming towards her supervisor and that the discipline assessed was appropriate in the circumstances.

FOR THE CORPORATION:

(SGD.) L. LAPLANTE

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

L. Laplante - Sr. Officer, Labour Relations, Montreal
L. Béchamps - Counsel, Montreal

And on behalf of the Union:

D. Olszewski - National Representative, Winnipeg
T. Blanchard - Regional Bargaining Representative, Toronto
R. Masse - Regional Bargaining Representative, Montreal
K. Erickson - Sr. Counter Sales Agent, London
W. - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, as alleged by the Corporation, that during the course of a verbal exchange with Team Leader Carol Barbosa on May 8, 2003, the grievor used verbally aggressive and insulting language. Her supervisor was then counselling her about progress in her productivity as a Telephone Sales Agent. The Arbitrator is satisfied that in fact the feedback being provided by Ms. Barbosa was positive, noting that the grievor had made substantial progress in her post-telephone call processing time (PCP) over the past year. When Ms. Barbosa then made a statement to the effect that it would be interesting to see if the grievor could next achieve the office average, W. reacted strongly, questioning her supervisor's management style, stating that Ms. Barbosa made herself and other agents uncomfortable and that she was sarcastic and intimidating.

While the Arbitrator appreciates the context in which the unfortunate exchange occurred (see **CROA 3391**) the fact remains that the grievor did engage in a verbal outburst that was insubordinate and disrespectful towards her supervisor. In the Arbitrator's view the assessment of five demerits for her conduct was reasonable in the circumstances.

For the foregoing reasons the grievance must be dismissed.

December 15, 2003

(signed) MICHEL G. PICHER
ARBITRATOR