

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3423**

Heard in Montreal, Wednesday, 12 May 2004

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Concerning the assessment of 20 demerit marks to Ms. Deborah Lee (Counter Sales Agent, Kingston, Ontario).

UNION'S STATEMENT OF ISSUE:

On June 4th, 2001, Ms. Debbie Lee was investigated for her alleged unbecoming conduct on May 28th, 2001. She was subsequently assessed twenty demerits for the incidents of that day.

It is the Union's position that Ms. Lee should not have been assessed discipline as a result of the incident of May 28, 2001. First, Ms. Lee initiated a discussion with Mr. Gilbert Seymour. The discussion concerned the hours of work at the Kingston Station and was an emotional issue with both Mr. Seymour and Ms. Lee. The discussion was to be a private one. Mr. Seymour took exception to Ms. Lee's tone of voice. There is no evidence that Ms. Lee used foul language or acted in any manner that should warrant discipline, and it would appear, that she was disciplined for taking time to discuss the most efficient method of opening the station on Sundays.

Secondly, the Kingston station has been well known to have a poisoned work environment and management has done little to effect change at that location. The incident of May 28th, 2001 was more akin to two employees having a disagreement as opposed to "conduct unbecoming".

In the alternative, should the Arbitrator find there was cause for discipline, it is the Union's position that the discipline was excessive in the extreme and that any discipline must be

mitigated by the relative harmlessness of the situation along with the grievor's long service record.

CORPORATION' STATEMENT OF ISSUE:

The Corporation held an investigation on June 4, 2001, regarding Ms. Debbie Lee's conduct while on duty May 28, 2001. On this date, she had a verbal altercation with Mr. Gilbert Seymour, the Senior Counter Sales Agent, at the Kingston Station. According to a fellow employee, Mr. Donald Workman, Ms. Lee raised her voice in anger to such extent that passengers at the ticket office could hear her yelling. She was subsequently assessed twenty (20) demerit marks for her conduct.

It is the Corporation position that the discipline is warranted in the circumstances. Ms. Lee was the instigator of the altercation as corroborated by Mr. Seymour and Mr. Workman. The issue of discussion was clearly work related. The discipline assessed was progressive in nature as she was previously assessed fifteen (15) demerit marks for a similar infraction on December 19, 2000.

For the above reasons, the Corporation has denied the grievance.

FOR THE UNION: FOR THE CORPORATION:

(SGD.) D. OLSHEWSKI (SGD.) B. E. WOODS

NATIONAL REPRESENTATIVE DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

L. Béchamp - Counsel, Montreal
 L. Laplante - Sr. Officer, Labour Relations, Montreal
 C. DiGrazia - Manager, Customer Service, Ottawa
 And on behalf of the Union:
 D. Olszewski - National Representative, Winnipeg
 T. Blanchard - Bargaining Representative, Toronto
 D. Delcloe - Vice-President, Local 4003
 D. Lee - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on May 28, 2001 the grievor, Counter Sales Agent Debbie Lee of Kingston, Ontario, got into a heated discussion with another employee. It is common ground that the grievor was of the view that the opening time for the Kingston Station on Sundays, which was 10:00 a.m., was not sufficiently in advance of the first train, which arrived at 10:35 a.m. She therefore approached Kinston

Lead Hand Gilbert Seymour and met with him in a room adjacent to the ticket selling area of the Kingston Station.

Ms. Lee took the view that the Kingston Station should be opened at 9:30 a.m. on Sundays rather than at 10:00, to allow sufficient time for the sale of tickets prior to the arrival of the 10:35 a.m. train. It also appears that during the same conversation she proposed a change in her lunch hour on Saturdays to avoid another employee being compelled to work alone to service a train. It is not disputed that Mr. Seymour did not agree with either of the proposals that the grievor put forward.

The complaint about Ms. Lee's conduct emerged, in part, as a result of a letter written by Mr. Seymour to the Manager of Customer Services, Mr. Jeff Labelle, describing the incident. According to his account, which essentially remains unrebutted, when he indicated that he was not prepared to make the changes that she requested, and that she appeared to be the only one concerned about the Sunday opening time, she raised her voice to an objectionable level. In that regard his letter states, in part:

At that point she got upset with me and in a high tone of voice started to yell at me and told me it was my fault that the station would not be opened at 9:30 a.m. Debbie opened the conference room door and was still yelling at me so the customers could hear her. This was not the first time she has yelled in the station. It has been going on for years.

As part of its case the Union sought to challenge a supporting letter of complaint filed by the grievor's co-employee, Mr. Don Workman, who states that he overheard part of the conversation as Ms. Lee emerged from the conference room. The Union stresses that there has been a history of animosity between Ms. Lee and Mr. Workman, and questions the credibility of his description of events, noting that on a number of occasions he has taken pains to record any alleged misconduct by Ms. Lee such as her being a few minutes late, or spending time talking socially with the person in charge of the refreshment stand in the station. The suggestion is that Mr. Workman has an agenda as regards Ms. Lee and should not be believed.

The Arbitrator does not need to deal with the alleged bad faith of Mr. Don Workman or his alleged efforts as an informer to undermine the grievor's employment. In the case at hand there is no reason to doubt the account of events related by Lead Hand

Gilbert Seymour. Mr. Seymour's statement of what occurred, which the Arbitrator accepts as credible, does reflect an unacceptable means of dealing with a fellow employee. As reflected in a letter of support for the grievor which Mr. Seymour eventually wrote on behalf of Ms. Lee, in relation to other discipline in June of 2003, there is no reason to believe that Mr. Seymour had any bias or personal agenda as regards the employment security of Ms. Lee. What the evidence confirms is that the grievor did, for reasons she best understands, raise her voice in an unacceptable manner in what should have been a normal and rational exchange of opinions with her lead hand. She did so in such a way as to disturb the person with whom she was speaking, and at a level of yelling which was clearly overheard elsewhere in the station when customers were present.

The issue is the appropriate measure of discipline in the circumstances. Following its investigation the Corporation assessed twenty demerits against Ms. Lee for conduct unbecoming an employee. The assessment of that number of demerits is somewhat understandable, given that the grievor then had a fifteen demerit assessment for similar conduct dating from December of 2000. However, in the Arbitrator's view there are mitigating factors to consider in evaluating the appropriate measure of discipline. In the case at hand it is not disputed that apart from her raising the level of her voice, Ms. Lee did not express herself in a way which was contemptuous of authority, that was personally insulting to Mr. Seymour or that could be fairly qualified as open insubordination. What she did, in essence, was to talk too loud, in an unprofessional manner, exposing an internal disagreement between two employees to the hearing of others, including customers, in the station area. In the circumstances, having regard to the fact that the grievor is an employee of some twenty-five years' service, the Arbitrator is satisfied that the assessment of ten demerits would have been appropriate in the circumstances.

The grievance is therefore allowed, in part. The Arbitrator directs that ten demerits be substituted for the twenty demerits placed on the grievor's record for the incident of May 28, 2001.

May 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR