T.D. 5/94
Decision rendered on February 9, 1994

CANADIAN HUMAN RIGHTS ACT
RSC 1985, c H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

BOZIDAR RODOVANOVIC
Complainant

and

CANADIAN HUMAN RIGHTS COMMISSION
Commission

and

VIA RAIL CANADA INC

Respondent

TRIBUNAL DECISION

TRIBUNAL: ROGER DOYON, Chairman

APPEARANCES: FRANCOIS LUMBU, Counsel for the Commission

CHANTAL LAMARCHE, Counsel for the Respondent VIA Rail Canada Inc

DATES AND LOCATION
OF THE HEARING: October 4 and 5, 1993
in Montreal, Quebec

TRANSLATION FROM FRENCH

INTRODUCTION

On July 14, 1993, Keith C Norton, President of the Human Rights Tribunal Panel, appointed a Human Rights Tribunal, consisting of the undersigned, to

examine the complaint filed by Bozidar Rodovanovic on March 12, 1990, against VIA Rail Canada Inc, as shown by the document introduced as exhibit T-1. The hearings were held in Montreal on October 4 and 5, 1993.

THE COMPLAINT

On March 12, 1990, Bozidar Rodovanovic filed a complaint with the Human Rights Commission against the Respondent, VIA Rail Canada Inc. This complaint, introduced as exhibit C-3, reads as follows:

> [Translation]
> The management of VIA Rail Canada Inc discriminated against me because of my national origin (Yugoslavian) by completely unjustifiably assessing me 45 demerit points and dismissing me from my assistant carman position, in violation of section 7 of the Canadian Human Rights Act.
>
> On December 18, 1989, I was assessed 45 demerit points which resulted in my dismissal because I had allegedly had an altercation with another employee on December 3, 1989.
>
> In actual fact, on December 3, 1989, an employee, Yvon Gervais, harassed me by making racist comments to me and jostling me. During this incident, I was the victim of the unacceptable behaviour of Yvon Gervais, and my behaviour did not justify any disciplinary action being taken against me.
>
> The decision to dismiss me constitutes a flagrant injustice, and as a result, I have suffered harm for which I hold the Respondent responsible.
>
> Signed at Montreal, Quebec, this 12th day of March 1990
>
> Complainant's signature Signature of witness

At the hearing, the parties agreed that the last paragraph of the complaint should be amended to read as follows:

> [Translation]
> The decision to dismiss me, which was later changed to a suspension, constitutes a flagrant injustice, and as a result, I have suffered significant harm

for which I hold the Respondent responsible.

THE FACTS

The Complainant, of Yugoslavian origin, immigrated to Canada in 1975, and became a Canadian citizen in 1978.

In 1979, he was hired by CN and then transferred to VIA Rail Canada Inc, where he holds an assistant carman position on a regular 11:30 pm to 7:30 am shift, from Saturday evening to Thursday morning, and occasionally on a 3:30 pm to 11:30 pm shift.

By mutual agreement, the parties introduced as exhibit A-I an agreement on the facts which

AGREEMENT ON THE FACTS

1. The Complainant, Bozidar Rodovanovic, is an assistant carman who works for VIA Rail Canada Inc (hereinafter called "VIA"). He works at the Montreal maintenance centre.

2. Yvon Gervais is also an assistant carman at VIA who works at the Montreal maintenance centre.

3. Both employees belong to the bargaining unit represented by the Brotherhood of Railway Carmen of Canada.

4. The working conditions of both employees are, at all times relevant to this case, governed by a collective agreement between the union and VIA.

5. Prior to December 3, 1989, the Complainant and Yvon Gervais were on friendly terms.

6. On or about November 3, 1989, the Complainant lent Yvon Gervais a plastic puzzle for the weekend. The son of Yvon Gervais misplaced a piece of the puzzle. When he went back to work, Yvon Gervais told the Complainant, and said that he would return the puzzle when he found the missing piece.

7. On a few occasions during the weeks prior to December 3, 1989, Mr Rodovanovic pressed Mr Gervais to return the puzzle.

8. Every time Mr Rodovanovic asked him for the puzzle, Mr Gervais said that he could not give it back because he did not have the puzzle, that he had already explained that he had given the puzzle to his son, who had lost it, and he was unable

to return it at that point in time.

9. Shortly before their shift began on the afternoon of December 3, 1989, Mr Gervais and Mr Rodovanovic were sitting in the company cafeteria when the latter asked Mr Gervais for the puzzle in question once again.

10. Mr Rodovanovic's persistence in asking Mr Gervais to return the puzzle led to sharp words being exchanged.

11. Mr Gervais was apparently having family problems, and he was visibly upset.

12. Although he had been on friendly terms with Mr Rodovanovic in the past, Mr Gervais got angry when the latter told him that he could not be trusted.

13. Mr Gervais, in turn, said the following about Mr Rodovanovic: "[translation] Damned Russian deportee, you can go back to your country." He also said something to the effect that Mr Rodovanovic should go back to Russia because Quebec was for Quebeckers, and he was a communist.

14. As he said this, Mr Gervais stood up and pushed Mr Rodovanovic's shoulder, and the latter was shoved up against a table, and his safety hat fell on the floor.

15. The incident ended at this point.

16. After hearing about the incident that occurred on December 3, 1989, VIA decided to immediately suspend both employees until a more extensive investigation had been carried out.

17. VIA undertook an investigation into the incident of December 3, 1989, and collected versions of the incident from various witnesses, the Complainant and Yvon Gervais.

18. After considering and weighing the facts revealed during the investigation, VIA concluded that the Complainant and Yvon Gervais were equally responsible for the incident on December 3, 1989.

19. VIA therefore decided to penalize both employees by adding 45 demerit points to their files.

20. Adding 45 demerit points to the Complainant's file brought the total points to
more than 60, and, in accordance with the points system in effect, a total of more than 60 points resulted in dismissal.

21. Adding 45 demerit points to the file of Yvon Gervais also resulted in his dismissal because the total demerit points in his file exceeded 60.

22. On January 2, 1990, the Brotherhood of Railway Carmen of Canada filed two grievances under the collective agreement on behalf of Mr Gervais and Mr Rodovanovic in which the Brotherhood requested that the disciplinary action be withdrawn (copies of both grievances are attached).

23. Pursuant to the grievance filed on behalf of Mr Rodovanovic and the agreement reached with the union, VIA reassessed the file and decided that the Complainant could go back to work, and that the demerit points in his disciplinary file would be adjusted to 55, thus decreasing the number of demerit points assessed for the incident of December 3, 1989, from 45 to 10. The Complainant was suspended for five months without pay instead of being dismissed. However, there was no change to the dismissal of Mr Gervais.

24. Yvon Gervais took his grievance to arbitration and it was heard by Harvey Frumkin.

25. After hearing the witnesses and the representations of the union and VIA, the adjudicator rendered his decision on May 23, 1991, and he accepted "[translation] VIA's initial assessment according to which both participants should share the blame

equally for the incident" (arbitral award, a copy of which is attached, page 4).

26. According to the adjudicator, Mr Rodovanovic must bear full responsibility for provoking the incident, and Mr Gervais full responsibility for his reaction.

Heenan Blaikie
Counsel for VIA Rail
Canada Inc

Bozidar Rodovanovic, Complainant

When his suspension ended, the Complainant returned to his assistant carman position, on May 1, 1990, and, on July 21, 1993, he received a letter of recognition from his employer as part of VIA's excellence operation

"[translation] for having, in the performance of his duties, shown continued interest and maintained exemplary work quality in the cleaning of the airconditioner condensers in LRC cars so that passengers enjoy a comfortable trip." (Exhibit C-4)

Francois Lumbu
Canadian Human Rights Commission

JURISDICTION OF THE TRIBUNAL

VIA Rail Canada Inc maintains that the Tribunal does not have jurisdiction to hear the complaint of Mr Rodovanovic. To support its claim, the Respondent cites subsection 41(c) of the Canadian Human Rights Act, RSC 1985, c H-6, which specifies that:

Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

(c) the complaint is beyond the jurisdiction of the Commission.

The Respondent claims that the damages requested by Mr Rodovanovic in support of his complaint fall under the jurisdiction of an adjudicator since the parties are bound by a collective agreement which provides for a grievance procedure for employees who claim their rights under this

agreement have not been respected. Since grievances fall under the jurisdiction of an adjudicator, it would consequently be beyond the jurisdiction of this Tribunal to rule on the complaint of Mr Rodovanovic.

Pursuant to the incident on December 3, 1989, VIA Rail Canada Inc decided to add 45 demerit points to the Complainant's file, bringing his total demerit points to 90.

Under the points system in effect, when the total demerit points in an employee's file exceed 60, the disciplinary action taken is dismissal, and the Complainant was in fact dismissed.

On January 2, 1990, through the union to which he belonged, Mr Rodovanovic filed a grievance concerning the disciplinary action taken. Further to a meeting between the union and management, an agreement was reached on April 23, 1990 to modify the disciplinary action taken against the Complainant. He was suspended for five months and ten demerit points were added to his file, bringing the total demerit points to 55. The Complainant accepted this agreement (Volume 1, page 62).

Having exhausted all the recourse possible under the collective agreement, Mr Rodovanovic turned to the Canadian Human Rights Commission. The complaint he filed comprises two parts.

Firstly, he thinks that the disciplinary action taken against him was based on the fact that he was of Yugoslavian origin. He requests that this suspension and the ten demerit points in his file be nullified, and that he be compensated for the salary he lost during his suspension which, by mutual consent, the parties said was $3,383.37.

Secondly, Mr Rodovanovic maintains that he was the victim of racist comments made by one of the Respondent's employees.

Does it fall under the Tribunal's jurisdiction to hear the first part of the complaint?

In St Anne Nackawic Pulp & Paper v CPWU, [1986] 1 SCR 704, the Honourable Justice Estey stated on pages 718 and 719 that:

The collective agreement establishes the broad parameters of the relationship between the employer and his employees. This relationship is properly regulated through arbitration and it would, in general, subvert both the relationship and

the statutory scheme under which it arises to hold that matters addressed and governed by the collective agreement may nevertheless be the subject of actions in the courts at common law. . . . The more modern approach is to consider that labour relations legislation provides a code governing all aspects of labour relations, and that it would offend the legislative scheme to permit the parties to a collective agreement, or the employees on whose behalf it was negotiated, to have recourse to the ordinary courts which are in the circumstances a duplicative forum to which the legislature has not assigned these tasks.

The Complainant clearly understood the agreement of April 23, 1990, and he said (Volume 2, pages 61-62):

[Translation]
Chairman

Mr Rodovanovic, you were dismissed in December 1989. You understand that when someone is dismissed that means that he loses his job forever, right?

Pursuant to the grievance that you filed through your union, an agreement was reached between the union and the employer that you would not be dismissed, but that you would be suspended for five months. And you agreed to this.

Witness

I did not agree.

Chairman

But you agreed, because you came back to work in May 1990. You agreed to accept five months' punishment.

Witness

Okay.

Chairman

Do you agree?

Witness

Yes.

Chairman

And is it also true that you agreed to have 10 demerit points added to your file instead of 45? Instead of having 90 demerit points in your file you would only have 55. Did you agree to this?

Witness

Yes.

Chairman

And you came back to work?

Witness

Yes.

The agreement that Mr Rodovanovic accepted is in the nature of an arbitral award, which the Tribunal does not have the power to change. Therefore, the first part of the complaint does not fall under the jurisdiction of this Tribunal, especially since if it did consider itself to have jurisdiction, it would act as an appeal tribunal.

It would, however, be advisable to point out that the facts introduced in evidence clearly showed that the disciplinary action taken against the Complainant was based solely on the fact that an altercation had occurred with another employee, and had nothing to do with his ethnic origin.

With respect to the second part of the complaint, to the effect that an employee of VIA Rail Canada Inc, Yvon Gervais, had made racist comments to Mr Rodovanovic, it is up to the Complainant to show the Tribunal that he was the prima facie victim of a discriminatory act. This requirement stems from the Supreme Court of Canada decision in Ontario Human Rights Commission v Etobicoke, [19821 1 SCR 202.

The evidence shows that on December 3, 1989, Bozidar Rodovanovic, a Canadian citizen of Yugoslavian origin, was an employee of the Respondent, as was Yvon Gervais.

In the document entitled "Agreement on the Facts" (Exhibit A-I), paragraph 13 reads:

[Translation]

Mr Gervais, in turn, said the following about Mr Rodovanovic: "[translation] Damned Russian deportee, you can go back to your country." He also said something to the effect that Mr Rodovanovic should go back to Russia because Quebec was for Quebeckers, and he was a communist.

This admission demonstrates, primafacie, that the Complainant was a victim of a discriminatory act based on his national origin.

VIA Rail Canada Inc maintains that the Tribunal does not have jurisdiction to hear this second part of the complaint, which was apparently also part of the agreement reached on April 23, 1990, modifying the disciplinary action taken.

When the immediate supervisors of Mr Rodovanovic and Mr Gervais were informed that the two employees had been involved in an altercation, Mr Rodovanovic and Mr Gervais were suspended on the spot and they left the premises.

The purpose of this suspension was to prevent any risk of recurrence and to permit an investigation to be carried out so that the parties involved could be questioned and, once the facts had been established, to decide what disciplinary action might be required.

The versions obtained from each employee (1-2) confirm that the two employees were involved in an altercation, and that Mr Gervais made racist comments to Mr Rodovanovic.

The racist comments that were made to the Complainant were then ignored because Mr Rodovanovic did not file a complaint. Instead, attention was focused on the issue of the altercation, which was considered much more important.

In the opinion of Georges Cyr, employee relations manager at VIA Rail Canada Inc (Volume 1, page 165):

[Translation]

For VIA, an altercation between two employees is something . . . for us, it is an offence for which a person is subject to dismissal, so it is something very serious.

Once the investigation was complete, Mr Cyr, along with Mr Lussier, the workshop foreman who had participated in the investigation, met with the director of the Montreal maintenance

centre, Marc Duclos, who had ultimate responsibility for deciding on the disciplinary action to be taken. After examining the file, Mr Cyr explained the director's decision (Volume 1, pages 174 and 175):

[Translation]
A. The director's decision, after verifying all that, his decision was for both employees to have an equal sentence, it was to give an equal sentence and it was to give a sentence . . .

you see, for us, in the disciplinary system, 60 points means a dismissal. He said that lie wanted a stiff sentence that would very clearly show these employees that fighting on work premises was not tolerated at VIA Rail.

As a result, he said 45 demerit points. At that point, I said that for these two people, in view of their record at that time, 45 demerit points meant a dismissal.

He said, he wouldn't go any lower than that, so if it was a dismissal, it was unfortunate, but it was going to be a dismissal, because he told me he didn't want to take a certain kind of disciplinary action just because they had 45 points; it was absolutely unacceptable to only assess ten demerit points; that was like telling everyone in the workshop know that a fight was worth ten demerit points there.

So he said disciplinary action that very clearly showed, because we are still talking about progressive disciplinary action for a recurrence, there is no employee who . . . so it was 45 demerit points.

Then Mr Cyr revealed the reasons why the same disciplinary action was taken against both employees (Volume 1, page 179):

[Translation]

Q. Why was it decided that Mr Rodovanovic would receive the same penalty as Mr Gervais?

A. Because based on the documentation, the altercation, in order to really
judge the altercation, instigator/victim, and in labour law, this is the recommendation that I made based on the precedents that I had, when two people fight, there is an attacker and a victim, an instigator and a victim, but the responsibility is equal. That is why the same disciplinary action was taken against both.

Chairman

In short, you said that if there was an altercation, it took two to tango?

Witness

Yes.

Chairman

So they would deserve the same punishment?

Witness

Exactly.

According to the evidence, when the disciplinary action was taken against Mr Gervais, the Respondent's managers completely disregarded the racist comments that he had apparently made to the Complainant and the disciplinary action that might have been taken against him for these comments - by Mr Cyr's own admission. (Volume 1, pages 193, 194 and 195).

[Translation]
Q. Therefore, if we understand your testimony correctly Mr Cyr, it was as of the third step . . . at the third step you took into account the racial comments that were made to Mr Rodovanovic, and the assailant factor.

A. Yes.

Q. Why was this not taken into account sooner?

A. Because before . . . firstly, there was never a formal complaint. The first time I was informed that Mr Rodovanovic was filing a discrimination complaint was when I saw the form from Human Rights arrive.

Chairman

Mr Rodovanovic's complaint to the Human Rights Commission?

Witness

Yes.

Chairman

When did the dismissal occur?

Witness

According to the collective agreement, it must occur within 21 days after the investigation has been completed. I do not recall when the decision was made, but if we are going to say that the last inquiry was made on the 11th, as you told me, it had to be done 21 days after that because . . .

Chairman

For the purposes of the discussion, let us go back to 1990, after the holidays.

Witness

Yes.

Chairman

When the disciplinary action, dismissal, was taken, the discrimination had in no way been taken into account?

Witness

No. It was based on the altercation, as I just told you. It was just that that had . . .

Chairman

Yes, but, Mr Cyr, making a decision in labour law, you and I know that when the employer makes its decision, it makes a decision based on the facts.

What you are saying to me, you are saying that when the decision was made about these two workers, it was decided that both of them would be dismissed for the physical altercation. We agree on this point completely. You just told me that at that time, discrimination was never, to your knowledge, a possible issue.

Witness

When I read the investigation, I read that there had been words exchanged, but that was not taken into account when the disciplinary action was taken.

Chairman

Therefore it was not taken into consideration at the time of the dismissal.

Witness

No.

On March 12, 1990, Mr Rodovanovic filed a complaint with the Canadian Human Rights Commission (Exhibit A-I).

During April 1990, at the third stage of the grievance procedure, a management/union meeting was held with a view to discussing the Complainant's grievance, and to possibly reaching an agreement.

It was then decided that the disciplinary action taken against the Complainant would be changed to five months' suspension and ten demerit points would be added to his file, while the disciplinary action taken against Mr Gervais would remain unchanged.

The reasons that prompted the Respondent to change the disciplinary action taken against the Complainant were based on the fact that, although Mr Rodovanovic had provoked the incident by insisting on obtaining his puzzle,

he had been attacked by Mr Gervais, so that his punishment had to be less than that of Mr Gervais, the attacker, whose reaction had been disproportionate to the provocation. This is why the disciplinary action taken against Mr Gervais was maintained.

The Tribunal cannot subscribe to the Respondent's claim that the discrimination of which the Complainant was a victim was covered by the agreement of April 23, 1990, for the following reasons:

a) In January 1990, the Respondent took disciplinary action against Mr Gervais solely for the physical altercation with the Complainant. Therefore, in April 1990, it could not add another reason, that of the verbal altercation, to justify and maintain the disciplinary action already taken.

b) The Respondent claimed that maintaining the disciplinary action taken against Mr Gervais also served to penalize him for the racist comments he had made to the Complainant. However, Mr Cyr provided the following response to the Tribunal's question (Volume 1, page 203):

[Translation]
Chairman

What I am trying to clearly establish with you is that no disciplinary action was ever taken against Mr Gervais for the matter of the discrimination.

Witness

No.

Chairman

That's right.

Witness

Exactly.

c) After the grievance of Mr Gervais was heard on April 30, 1991, adjudicator Harvey Frumkin pointed out the following on page 4 of the arbitral award that he rendered on May 23, 1991:

[Translation]

> Mr Rodovanovic must bear full responsibility for having provoked the incident, and the griever full responsibility for his reaction. However, according to the tribunal, it would be wrong to say that one was more guilty than the other; therefore, the tribunal prefers the company's first opinion concerning the relative responsibility of the participants. . . . Once it was established, after investigation, that there was no reason to impute greater responsibility for the incident to one or the other participant (as was the company's initial response), from then on the guiding principle followed should have been that of equal treatment.

None of the adjudicator's reasons dealt with the fact that Mr Gervais had made racist comments to the Complainant.

Consequently, the Tribunal concludes that it has the jurisdiction to rule on the part of Mr Rodovanovic's complaint concerning the racist comments Mr Gervais made to him.

THE LAW

The Tribunal refers to the provisions of the Canadian Human Rights Act, RSC 1985, c H-6, and more specifically to the following sections:

> 2. The purpose of this Act is to extend the laws in Canada to give effect,

> within the purview of matters coming within the legislative authority of Parliament, to the principle that every individual should have an equal opportunity with other individuals to make for himself or herself the life that lie or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

3.(1) For all purposes of this Act, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for which a pardon has been granted are prohibited grounds of discrimination.

It having been recognized that the comments Mr Gervais made to the Complainant were discriminatory, the Respondent maintains that Mr Rodovanovic is not justified in claiming damages since they are not the subject of the complaint he filed.

This complaint must be analysed in its entirety. Based on the complaint, the Complainant's goal is, on the one hand, the cancellation and the pecuniary consequences of the disciplinary action taken against him, and on the other hand, to obtain compensation, or damages, for the harm he suffered as a result of the discriminatory act of which he was a victim.

With whom lies responsibility for compensating for the harm suffered by the Complainant as a result of the racist comments made to him by Mr Gervais, an employee of VIA Rail Canada Inc who made these comments on VIA Rail premises?

Subsection 65(1) of the Canadian Human Rights Act specifies that:

Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

In order to relieve itself of its responsibility, the Respondent must have complied with the following conditions set out in subsection 65(2) of the Canadian Human Rights Act, and specified in François v Canadian Pacific Limited (C P Rail) CHRR, Volume 9, decision 737, paragraph 36605:

1) that the employer did not consent to the commission of the act or omission complained of;

2) that the employer exercised all due diligence to prevent the act or omission

from being committed; and

3) that the employer exercised all due diligence subsequently to mitigate or avoid the effect of the act or omission.

There is no doubt that the Respondent did not consent to the commission of the act for which Mr Gervais is being blamed, that is, the racist comments made to the Complainant.

Did the Respondent exercise all due diligence to prevent the commission of the act in question?

According to the evidence, the Respondent had already adopted an anti-discrimination and anti-harassment policy in 1989 which A,as found in the personnel administration guide in the library, and could be consulted on request.

Although the Respondent's managers testified to the effect that when they were informed of discrimination complaints they diligently took steps to resolve them, none of the evidence shows that prior to the incident in 1989, the Respondent posted the existing policy or took the necessary steps to inform and make its employees aware of this policy.

Pursuant to the incident on December 3, 1989, did the Respondent exercise all due diligence to mitigate the effect of the act committed by the employee, Mr Gervais?

In his statement to Mr Roussel, the workshop foreman, on December 6, 1989, the Complainant reported the racist comments made to him, but the comments were ignored because Mr Rodovanovic did not file a formal discrimination complaint and the altercation was the focus of the investigation.

Despite this incident, the Respondent did not deem it appropriate to inform its employees of the existence of this anti-discrimination and anti-harassment policy. It was not until at least two months later that this policy was posted.

Consequently, the Respondent did not succeed in overturning the presumption set out in subsection 65(l) of the Canadian Human Rights Act by demonstrating that it had satisfied the provisions of subsection 65(2), RSC 1985, c H-6, and it must assume the consequences of the discriminatory act committed against the Complainant by its employee Mr Gervais.

HURT FEELINGS AND LOSS OF SELF-RESPECT

Subsection 53(3) of the Canadian Human Rights Act specifies that:

In addition to any order that the Tribunal may make pursuant to subsection (2), if the Tribunal finds that

(a) a person is engaging or has engaged in a discriminatory practice wilfully or recklessly, or

(b) the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice,

the Tribunal may order the person to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal may determine.

There is no doubt that the racist comments made to the Complainant were deliberate, and the Complainant was humiliated.

Mr Rodovanovic is requesting damages, and a letter of apology from his employer, VIA Rail Canada Inc.

The Complainant was humiliated by the racist comments that were made to him in front of about twenty of his work colleagues. He said (Volume 1, page 46):

[Translation]

Q. With respect to the feelings and damages aspect, you have said . . . how did you feel as the victim of racist comments?

A. First, I thought that it wasn't right for my colleague to stand up in front of everyone and shout like that . . . saying that I was a damned deportee from Russia despite the fact that I don't come from there, that I should take the boat back, that I read my newspaper upside down, that since I was here in Quebec, I must show some respect because Quebeckers were putting food on my table. Even telling me that he was leaving, but that he'd take me with him, I can't forget that ...

Q. Did you talk to your family about this incident?

A. I spoke to my girlfriend, to my daughter, but I didn't talk to the people here as much because I kept it to myself because I was a little ashamed of what happened. I was surprised. I can't seem to forget it.

Q. Do you still think about it now?

A. I think, I don't think that I can ever forget it.

In view of the humiliation the Complainant suffered, it is appropriate to order the Respondent to pay him $1,500 in compensation for hurt feelings and loss of self-respect.

INTEREST

With respect to the payment of interest on the amount awarded, the Tribunal is applying the entitlement recognized in Morgan v Canada (Canadian Armed Forces) (1989), 10 CHRR 6386, and more specifically, the following on page D/6407 paragraph 45289 concerning the entitlement to interest:

> The commencement of the entitlement to interest should vary with the nature of the compensation. With respect to compensation for hurt feelings and loss of self-respect, interest should begin to accrue from the date when the complainant suffers the hurt feelings and loss of self-respect. This will normally be the date when the complainant learns of prohibited discrimination by the Respondent.

Consequently, the Respondent is ordered to pay interest, at the rate of 8 per cent per annum, on the amount of $1,500 from December 3, 1989 until the day the compensation awarded is paid.

APOLOGIES

The evidence shows that the Respondent was quickly informed of the racist comments directed at the Complainant, but it ignored this aspect of the incident, preferring to investigate the altercation between the two employees. Furthermore, it neglected to take steps to provide the

Complainant with the assurance that it would take sufficient action to prevent the recurrence of such incidents, while it would have been easy for the Respondent to at least post its anti-discrimination and anti-harassment policy immediately, instead of letting it collect dust on the library shelves.

Consequently, despite the amount of time that has passed, the Respondent is ordered to send an official letter of apology to the Complainant assuring him that in future it will be vigilant and attentive when its employees are victims of discriminatory acts.

SIGNED AT SAINT-GEORGES, this 31st day of December 1993.

[signed]
ROGER DOYON, Chairman