CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 830

Heard at Montreal, Tuesday, May 12, 1981.

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Alleged violation of Article 29 of Agreement No. 2 in connection with timetable changes on September 29, 1980.

JOINT STATEMENT OF ISSUE:

Timetable changes in passenger service are historically made twice a year, in Spring and Fall. These changes are made mainly to meet marketing demands and to reflect the necessary train schedule adjustments. Article 12.1 of the collective agreement provides for a general bid to be posted twice a year, in Spring and Fall, so that all on-train employees are given their choice of positions. The Fall 1980 general bid for on-train positions coincided with the timetable changes effective September 29, 1980.

The Supercontinental (from Toronto to Vancouver as train 5 and returning as train 6) was one among other trains which had its departure time re-scheduled. Toronto employees bidding on jobs on this train operate to Winnipeg and return. Prior to September 29, Train 5 departed Toronto at 13:35 daily with one night enroute to Winnipeg. Subsequent to the timetable re-scheduling, it was changed to leave at 23:20 with two nights enroute.

The Brotherhood contends that the above schedule change should be considered a Technological, Operational, Organizational change and thus, the employees affected should be protected under the provisions of Article 8 of the Supplemental Agreement referred to in Article 29.1 of the collective agreement. To substantiate its position, the Brotherhood refers to a letter dated February 12, 1975, in which a CN officer, in writing to the Brotherhood, recognized that a change (similar to the one dealt with in this case) “could invoke the provisions of the Supplemental Agreement.” Such being the case, CN gave the advance notice provided under the terms of the Supplemental Agreement.

The Corporation considers the re-scheduling of train departure resulting from the timetable changes as a normal change inherent in the nature of the work in which on-train employees are engaged. Consequently, the September 1980 timetable change was regarded as such a normal re-scheduling of duties and, as such, was specifically excluded by the provisions of the Supplemental Agreement. The Corporation acknowledges that in 1975, CN interpreted a change of a similar nature as one covered by the Supplemental Agreement. However, the Corporation believes that the wording of the Supplemental Agreement is more important than the application that might have been made in a particular case.

Consequently the Corporation has declined the grievance.

FOR THE EMPLOYEES:

(SGD.) J. D. HUNTER
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) A. D. ANDREW
SYSTEM MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

A. Leger	– Labour Relations Officer, Montreal
W. W. Fitz-Gerald	– Manager, On-Board Services, Toronto
C. A. B. Henery	– Human Resources Officer, Toronto

And on behalf of the Brotherhood:

F. C. Johnston	– Regional Vice-President, Great Lakes Region, Toronto

AWARD OF THE ARBITRATOR

It is the Union's contention in this case that notice under Article 8 of the "Job Security Agreement" ought to have been given in respect of a change in service effected with respect to trains 5 and 6, as of September 29, 1980.

By Article 29 of the Collective Agreement, the Supplemental Agreement governing Job Security applies to employees covered by the Collective Agreement (on-train employees), and by Article 8 of the Job Security Agreement the Company is not to put into effect any technological, operational or organizational change of a permanent nature which will have adverse effects on employees without giving the notice provided for in that Article.

In the instant case what the Company did was to show, in its regular timetable change, changes which, in respect of trains 5 and 6, would have certain effects on employees which, I think, were clearly "adverse" within the meaning of Article 8 of the Job Security Agreement.

It is acknowledged that timetable changes at regular intervals are a normal feature of railway operations. While some employees may at times feel some of the changes which occur to be undesirable, they are not necessarily ones involving "adverse effects" within the meaning of Article 8. Substantial changes in timetables are, however, "operational" changes, and while they may not usually come within the ambit of Article 8, there may be circumstances in which they do. In my view, the instant case is an example of such.

The Union relied heavily on the fact that in 1975 a very similar type of timetable change was instituted by a predecessor employer, and notice pursuant to Article 8 of the Job Security Agreement was given at that time. The giving of notice in that case, however, was simply the application of the provisions of the agreement by the predecessor employer in a particular situation as it existed at that time. While I consider that that application was correct, I would take the same view of the instant case even had the employer in the 1975 case refused to give an "Article 8" notice. That is, I do not consider that the parties in some way bound themselves – let alone the successor employer, which is successor to the passenger operations of more than one predecessor employer – to any particular interpretation of the Collective Agreement or of the Job Security Agreement.

On the facts of the instant case the change in operations involved not merely a change of departure and arrival times, but a change in the number of nights en route from Toronto to Winnipeg (with a resulting reduction in net hours of duty, it would seem), and, most significantly, a reduction in the number of crews. The effects on some employees, in my view, were "adverse" in the sense of Article 8 of the Job Security Agreement, and were the sort of effects which the provisions of that agreement are designed to ameliorate.

Article 8.7 of the Job Security Agreement is as follows:

> **8.7** The terms operational and organizational change shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments.

It was the Company's position that the rescheduling of train departure resulting from the timetable changes was a normal change inherent in the nature of the work in which on-train employees are engaged. As indicated above, it would be my view that that would generally be so, and indeed the Union was of the same opinion. The statement of that position is, however, too broad. It would permit the conclusion that the most drastic changes in operations did not involve the provisions of the Job Security Agreement, simply because those changes happened to be announced by way of a "timetable change". While, as I have suggested, most "timetable changes", involving no more than the "normal reassignment of duties" (and reference was made to the procedure of semi-annual bidding for jobs), there may nevertheless be operational change reflected in the timetables, which involve more than a "normal reassignment" (and are not otherwise covered by Article 8.7), and which are properly characterized as operational

changes for which an "Article 8" notice is required. For the reasons set out above, having regard to the extent of the changes, their effects on employees, and the apparent purpose of the Job Security provisions, it is my conclusion that the instant case is an example of such a change and that notice pursuant to Article 8 ought to have been given in this case.

For the foregoing reasons the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR