

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 907

Heard at Montreal, Tuesday, February 9, 1982

Concerning

**VIA RAIL CANADA INC.**

and

**CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT  
AND GENERAL WORKERS**

### **DISPUTE:**

Mr. A. Halagaza, Sleeping Car Conductor, Winnipeg, claiming pay as Service Manager.

### **JOINT STATEMENT OF ISSUE:**

On May 26, 1981, no Service Manager was available to work on trains Nos. 3-2, Winnipeg-Vancouver and return. Accordingly, Mr. Halagaza was called to work in place of the Service Manager.

Mr. Halagaza was compensated for that trip at the Sleeping Car Conductor's rate of pay.

The Brotherhood maintains that Mr. Halagaza was called upon to fill the temporary vacancy of Service Manager on the above mentioned assignment and should have been paid at the Service Manager's rate of pay as provided by Article 21.1 of the Collective Agreement.

The Corporation contends that Mr. Halagaza did not fulfill the responsibilities of a Service Manager but those of a Sleeping Car Conductor.

The Corporation has rejected the grievance through all steps of the grievance procedure.

### **FOR THE EMPLOYEE:**

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

### **FOR THE CORPORATION:**

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

There appeared on behalf of the Company:

A. Leger – Labour Relations Officer, Montreal  
A. W. Hallonquist – On-Board Services Manager, Winnipeg  
C. O. White – Labour Relations Assistant, Montreal

And on behalf of the Employee:

W. H. Matthew – Regional Vice President, Prairie Region, Winnipeg  
A. Cerilli – Representative, Prairie Region, Winnipeg

## **AWARD OF THE ARBITRATOR**

Article 21 of the Collective Agreement is as follows:

### **PRESERVATION OF RATES**

**21.1** Employees temporarily assigned to higher-rated positions shall receive the higher rate while occupying such positions. A temporary assignment to a higher-rated position contemplates the fulfillment of the duties and responsibilities of the position during the time occupied. Assisting higher-rated employees due to a temporary increase in the volume of work or for training purposes does not constitute a temporary assignment to a higher-rated position. A regularly assigned employee temporarily assigned to a lower-rated position shall not have his rate reduced.

In the instant case the question is simply whether or not the grievor fulfilled the duties and responsibilities of the higher-rated position during the time involved. Whether or not the grievor could properly be considered "qualified" for the position is not in issue. The mere fact (if true) of his having performed such work on a temporary basis might be some evidence of his qualification therefor, but it would not be conclusive.

Neither, it should be said, does an issue arise as to whether or not the Company was required to fill a position of Service Manager. If indeed the grievor only worked as a Sleeping Car Conductor, and if that was in violation of the Collective Agreement, that would raise a separate question from the one before me.

It would not be necessary, in the case of a temporary assignment, that the employee assigned perform all of the functions which might be required of the regular incumbent. There must, however, be some substantial performance of tasks which come within the higher-rated job and not within the lower-rated one.

The grievor was in fact called on to perform, and it seems did perform, certain tasks which are regularly those of a Service Manager but are not those of a Sleeping Car Conductor. He filled in reports as a Service Manager which he could not properly have been called on to do as a Sleeping Car Conductor. He was, as noted in the Joint Statement, "called to work in place of the Service Manager". While the material before me is skimpy as to the actual tasks performed by the grievor during the run in question, it appears that he did in fact act (well or poorly, qualified or not), in the place instead of a Service Manager.

In these circumstances, it is my conclusion that the grievor was in fact temporarily assigned to work as a Service Manager. He was entitled, pursuant to Article 21, to be paid at that rate for the period in question. The grievance is accordingly allowed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**