CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1452

Heard at Montreal, Tuesday, January 14, 1986

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Alleged violation of article 8.1 of the Supplemental Agreement governing Job Security – Technological, Operational, Organizational changes.

JOINT STATEMENT OF ISSUE:

On April 21, 1985, the Corporation issued a Special Bulletin advising that due to a decrease in passenger traffic the position of Steward-Waiter, Club Car, Train 43-44 between Ottawa – Toronto Ottawa would be abolished effective April 28, 1985.

The Brotherhood contends that such a reduction change is subject to a three months' notice in accordance with article 8.1 of the Supplemental Agreement.

The Corporation contends that the change resulted from a fluctuation of traffic contemplated in article 8.7 of the Supplemental Agreement and as such the 6 days' notice issued April 21, 1985 was properly issued in accordance with article 13.2 of Wage Agreement No. 2.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) TOM MCGRATH	(SGD.) A. GAGNÉ
NATIONAL VICE-PRESIDENT	DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

M. St-Jules	– Manager, Labour Relations, Inc., Montreal
C. 0. White	– Labour Relations Officer, Montreal
J. R. Kish	– Officer Personnel & Labour Relations, Montreal

And on behalf of the Brotherhood:

G. Côté	– Regional Vice-President, Montreal
I. Quinn	– Accredited Representative, Montreal
D. Tremblay	– Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

It is common ground that the Employer may rely on the exempting provision of article 8.7 of the Job Security Agreement with respect to any claim to benefits made by an employee whose job has been abolished by virtue of any alleged technological, operational or organizational change as defined under article 8.1.

Articles 8.1 and 8.7 provide:

> **8.1** The Corporation will not put into effect any technological, operational or organizational change of a permanent nature which will have adverse effects on employees without giving as much advance notice as possible to the Regional Vice-President representing such employees or such other officer as may be named by the Brotherhood to receive such notices. In any event, not less than three months' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.
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> **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.

In this case, not only has the downturn in traffic been carefully delineated in the Company's brief demonstrating the fluctuation in business on the grievor's run that resulted in his lay-off but absolutely no effort was made by the Trade Union to describe any type of technological, operational or organizational change that might give rise to any entitlements on the grievor's behalf pursuant to article 8.1 of the Job Security Agreement.

What the Trade Union relied upon in this grievance was a previous notice made by the Company under article 8.1 that was alleged to have stemmed from a similar circumstance that precipitated the abolition of the grievor's job.

As the Company's brief indicated not only was the circumstance that prompted the previous "notice" different from the grievor's situation (where an "organizational change" did occur) the Company, in my view, need not necessarily be bound by that action in future instances In other words, a previous unchallenged and uncontested action by the Company that may later be seen to have been a gratuitous, if not erroneous, gesture pursuant to article 8.1 of the collective agreement, will not in absence of cogent evidence, bind forever the Company thereafter to making the same gesture.

Because the Trade Union has not satisfied me of the tertiary requirements of a "change" contemplated by article 8.1 the Company's response to its grievance pursuant to article 8.7 was entirely superfluous and quite unnecessary.

For these reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR