CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1605

Heard at Montreal, Wednesday, January 14, 1987

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The establishment of two new classifications performing duties of seven other established classifications.

JOINT STATEMENT OF ISSUE:

On July 8, 1986, the Corporation advised the Brotherhood that effective August 1, 1986, a number of positions in VIA Ontario's Station Sales and Services Department would be reclassified to that of Senior Station Service Agent and Station Service Agent, and that any changes to these rates would be negotiated at System Headquarters.

The positions of Senior Baggage Attendant, Senior Ticket Examiner, and Senior Station Attendant were reclassified as Senior Station Service Agent.

The positions of Baggage Handlers, Baggage Attendant, Ticket Examiner, and Station Attendant were reclassified as Station Service Agent.

The Brotherhood claims that such changes in classifications can only be made through the Collective Bargaining process and are contrary to Appendix A of Collective Agreement No. 1.

The Corporation contends that such reclassifications are in accordance with Article 28.

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

There appeared on behalf of the Corporation:

M. St-Jules	– Manager Labour Relations, Montreal
C. 0. White	– Officer, Labour Relations, Montreal
A. Legault	– Manager, Administrative Services, Marketing & Sales, Montreal
R. Klimczak	– Manager, Human Resources, Toronto

And on behalf of the Brotherhood:

T. N. Stol	– Regional Vice-President, Toronto
T. McGrath	– National Vice-President, Ottawa
A. Cerilli	– Regional Vice-President, Winnipeg
G. Côté	– Regional Vice-President, Montreal
G. Boudreau	– Regional Vice-President, Moncton
J. A. Craig	– Regional Vice-President, Vancouver

AWARD OF THE ARBITRATOR

It does not appear to be disputed that the purpose of establishing the two new classifications is to give greater flexibility in the utilization of manpower, particularly in larger stations. During certain periods of time the ebb and flow of passenger traffic may cause heavier demands for the work of a particular classification while the work of another is under-utilised. With the new job titles, which are effectively combined classifications, the Corporation has more latitude in the assignment of employees in response to particular needs.

Absent specific prohibition in a Collective Agreement, it is generally accepted that the existence of job classifications does not prevent an employer adding tasks to a particular classification or creating new classifications to serve a *bona fide* business purpose. It is, of course, well established that a Corporation cannot artificially reclassify an employee with a view to assigning him or her the same job duties while avoiding the payment of the negotiated wage rates which previously were attached to those duties.

There is no suggestion in the material before the Arbitrator that the Corporation has sought, by the establishment of the two new categories, to undermine the application of the wage scale established in Appendix A to the Collective Agreement. It is common ground that the new composite classifications are remunerated at the level of the highest wage scale of the previous classifications contained within them. In other words, under the interim rate established by the Corporation, there is no loss of wages to any employee affected, and indeed it appears that in some instances employees have experienced a wage improvement.

The Union alleges violations of Articles 21.7, 28.4 and 28.5 of Collective Agreement No. 1. These provisions are, however, identical in their terms to Articles 19.5, 19.6 (c) and 19.6 (d) of Agreement No. 4 between the Ontario Northland Railway and the Brotherhood considered in **CROA 1291**. In that case the Union grieved the establishment of two new positions at Timmins and New Liskeard, Ontario, which combined the duties of two abolished positions, for which a rate of' pay at the higher end of the job classification was established. The Arbitrator dismissed the grievance, finding that no violation of the terms of the Collective Agreement, analogous to the provisions of the instant agreement, was disclosed.

In my view the facts in the instant case are indistinguishable in principle from those found in **CROA 1291**. On that basis I would conclude that the grievance must fail. If it were necessary to do so, in the alternative, I would conclude that the problems experienced by the Corporation in larger stations with respect to the regular flow in passenger traffic constitute "changed conditions" within the meaning of Article 21.7 that would justify the establishment of the new classifications. While it is true, as the Union points out, that the Corporation should have communicated the change to the Regional Vice-President of the Brotherhood, rather than the National Vice-President, it appears, firstly that it did so in conformity with the established practice affecting any system wide change and, secondly, that the Collective Agreement does not contemplate that a procedural error of that kind should nullify the Corporation's action, particularly where no prejudice to the Union has been disclosed.

For the foregoing reasons the grievance must be dismissed.

(Sgd.) MICHEL G. PICHER
ARBITRATOR