CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2108

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Rest entitlement for employees on Employment Security not called to work in a given week, and booking rest for employees on Employment Security status called to augment the spare board on a trip by trip basis.

JOINT STATEMENT OF ISSUE:

Following the changes to train services effective January 15, 1990, the Corporation issued a directive that employees on Employment Security status called to augment the spare board on a trip by trip basis would, upon being released from duty be permitted to book rest as follows:

REST ENTITLEMENT

Having performed duty on a minimum of three (3) consecutive days	one full calendar day
Having performed duty on a minimum of five (5) consecutive days	two full calendar days

The Brotherhood maintains that the above instructions are in violation of Article 7.11(b) of Collective Agreement No. 2, and that such employees are entitled to a lay-over period as defined in this Article, as well as regular time off in accordance with Article 4.13 of the Collective Agreement.

The Corporation maintains that these employees are not regularly assigned to the spare board, and as such, Article 7.11(b) has no application.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) A. CERILLI	(SGD.) M. ST-JULES
for: NATIONAL VICE-PRESIDENT	for: DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation [among others]:

M. St-Jules	– Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock	– Senior Officer, Labour Relations, Montreal
D. Fisher	– Senior Officer, Labour Relations, Montreal

And on behalf of the Brotherhood [among others]:

A. Cerilli	– Regional Vice-President, Winnipeg
T. McGrath	– National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The thrust of Article 7 of the Supplemental Agreement as well as the Special Agreement between the parties dated November 19, 1989 is that employees with employment security are not to be laid off. In the Arbitrator's view this means, insofar as possible, that they are to remain in a relatively unchanged situation as regards their relationship with the Corporation subject, of course, to the availability of specific work assignments to them. Under normal conditions employees in On-Board Service who are either on a spareboard or are liable to be called to augment a spareboard are in a position to know when they are likely to be called. This gives them the opportunity to organize their personal lives to advantage, while ensuring their availability when called. The material before the Arbitrator establishes that the circumstances of employees who are liable to be called to augment the spareboard have changed substantially since the service reductions of January 15, 1990. The Corporation now requires those employees who are on employment security to hold themselves available for a call on a seven-day-a-week basis. The Brotherhood submits that this occasions substantial hardship to its members who, being unaware with any degree of certainty as to when they might be called, are compelled to remain available for a call seven days a week, indefinitely.

In the Arbitrator's view the Collective Agreement and the Supplemental Agreement must be taken to intend implicitly that employees on employment security who do not suffer layoff are not thereby placed in a circumstance less advantageous than would obtain under their normal working conditions. In my view the problem giving rise to this grievance is adequately remedied if the employees who are liable to be called to augment the spareboard are called on the basis of a rotating list, with full information being available to them as to their relative position on the list at any point in time. This, in the Arbitrator's view, creates a circumstance analogous to their normal working condition and, in substantial measure, would eliminate the uncertainty that gives rise to this grievance. Such a system of calling employees to augment the spareboard on a rotating list would operate without prejudice to their normal right to rest without pay under Article 7.11(b) of the Collective Agreement during such times as they work in actual spareboard service.

The Arbitrator cannot, however, sustain the position of the Brotherhood that employees on employment security who are not called to augment the spareboard are entitled to eight calendar days' layover at their home terminal for each designated four-week period within the terms of Article 4.13 of the Collective Agreement. The word "layover" appearing in that article reflects the intention of the parties that the rest period intended therein is in contemplation of employees being in actual service which takes them away from their home terminal during the four-week period in question. It does not, in the Arbitrator's view, directly address the circumstance of employees who do not hold a regular assignment or a position on the spareboard and are only subject to call as employees with employment security. By the same token, however, the Arbitrator can see no basis in the Collective Agreement for the rest entitlement instituted by the Corporation, as reflected in the Joint Statement of Issue.

In the result, the Arbitrator finds and declares that employees on employment security called to augment the spareboard on a trip-by-trip basis are entitled to the rest without pay provided under Article 7.11(b) of Collective Agreement No. 2 on the completion of actual spareboard service. Insofar as they are not on active service, however, they are not entitled to the layover rights provided in Article 4.13 of the Collective Agreement. However, to ensure insofar as is possible that their conditions of employment and availability on employment security status are comparable to those which they enjoy under normal circumstances, the Corporation is directed to maintain a rotation list of employees on employment security status for the purposes of calling them to augment the spareboard on a trip-by-trip basis. The Corporation is further directed to discontinue the practice of assigning rest entitlement of one full calendar day on the basis of a minimum of three consecutive days' work and two full calendar days on the basis of a minimum of five consecutive days' work to such employees, as there is no basis for assigning rest in that manner under any provision of the Collective Agreement, or of the Supplemental Agreement, Special Agreement or the Memorandum of Agreement of November 19, 1989.

For the purposes of clarity, and in keeping with the principle that employees on employment security who are not laid off are to be treated, insofar as possible, in the same manner as they would be in normal circumstances, it must be noted that employees who book rest pursuant to the provisions of Article 7.11(b) of the Collective Agreement are not to receive wages or any other compensation during the period of rest booked. They are, in other words, to have no greater advantage in that regard than they would have if they were not on employment security status. While they retain their right under the Collective Agreement to opt for rest in the circumstances described in Article 7.11(b), they must accept the normal liabilities of that provision if they choose to invoke it.

Further, this award does not circumscribe such right as the Corporation has pursuant to the terms of the Supplemental Agreement, the Special Agreement and the Memorandum of Agreement of November 19, 1989 to call the employees in question to protect all available assignments under Collective Agreements No. 1 and No. 2.

February 15, 1991

(Sgd.)MICHEL G. PICHER
ARBITRATOR