

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2116

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The entitlement of Mr. H. London to employment security benefits.

JOINT STATEMENT OF ISSUE:

On October 12, 1989, the Corporation presented the Brotherhood with an Article J notice under the Special Agreement, advising them of government imposed service reductions to take effect January 15, 1990.

The grievor, Mr. H. London, was on sick leave between January 4, 1990, and January 18, 1990, during which time he was paid by Worker's Compensation in Manitoba.

Upon his return to work, Mr. London was denied employment security benefits by the Corporation.

The Brotherhood alleges that the Corporation has violated Article 7 of the Supplemental Agreement. The Brotherhood contends that Mr. London had the required years of service and seniority as required by Article 7 of the Supplemental Agreement and he should not be on laid-off status.

The Corporation maintains that the grievor's seniority was such that he could not have been able to hold a position immediately prior to the implementation of the service reductions, even if he had been physically able to work, and therefore he was not directly adversely affected by the changes of January 15, 1990. Consequently, the Corporation maintains that he was not entitled to employment security benefits.

FOR THE BROTHERHOOD:

(SGD.) A. CERILLI

for: NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) M. ST-JULES

for: DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Fisher	– Senior Officer, Labour Relations, Montreal
M. St-Jules	– Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock	– Senior Officer, Labour Relations, Montreal
R. Wesley	– Senior Officer, Labour Relations, Montreal
J. Kish	– Senior Advisor, Labour Relations, Montreal
D. Wolk	– Manager Customer Services, Montreal
M. M. Boyle	– Observer
D. David	– Observer

And on behalf of the Brotherhood:

A. Cerilli	– Regional Vice-President, Winnipeg
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T. McGrath	– National Vice-President, Ottawa
G. Murray	– Regional Vice-President, Moncton
R. J. Stevens	– Regional Vice-President, Toronto
R. Moreau	– Regional Vice-President, Montreal
J. Brown	– Representative, Montreal
A. Della Penna	– Local Chairperson, Montreal
F. Bisson	– Local Chairperson, Montreal
J-J Journault	– Local President, Montreal
K. Williams	– Secretary, Local Grievance Committee, Winnipeg
K. Sing	– Local Chairperson, Halifax
R. Dennis	– Local Chairperson, Moncton
L-P Rousseau	– Member, Local 335, Belleville
L. Robichaud	– Witness

AWARD OF THE ARBITRATOR

The Corporation does not dispute that if the grievor had been able to hold a position on January 15, 1990, if he had been physically able to work, he would be entitled to employment security benefits. The material before the Arbitrator establishes beyond controversy that three employees junior to Mr. London were at work on January 15, 1990. In the Arbitrator's view it is immaterial whether those individuals were at work on a long term basis or merely to serve as short term replacements. They would, in any event, be employees entitled to the protections of the Article J Notice. In the circumstances the Arbitrator is compelled to conclude that Mr. London would, but for his disability, have been at work effective January 15, 1990 and would have held a position immediately prior to the implementation of the service reductions. On that basis I find and determine that he is an employee adversely affected by the changes of January 15, 1990, albeit that the negative impact would only operate at such time as he returned from compensation, apparently on January 18, 1990. The Arbitrator therefore directs that the grievor be reinstated to employment security status retroactive to January 18, 1990, with compensation for all wages and benefits lost, and without loss of seniority.

For the purposes of clarity, and in the interests of avoiding a further misunderstanding, this award should not be taken as a determination that the most junior of three employees junior to Mr. London who were at work on January 15, 1990 would not be entitled to employment security status. That proposition, which appears to the Arbitrator to be doubtful, was not fully addressed and argued within the context of this grievance.

February 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR