

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2143

Heard at Montreal, Tuesday, 14 May 1991

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

A time claim on behalf of Mr. K. Williams for 64 hours and 15 minutes at the Service Manager's rate of pay.

JOINT STATEMENT OF ISSUE:

On December 6, 1988, the grievor, Mr. K. Williams, was assigned to the Winnipeg spareboard. The Brotherhood contends that Mr. Williams was available during the regular calling hours but was not called for a temporary vacancy of Service Manager on December 6, 1988, which was given to a junior employee in violation of Article 7 of Collective Agreement No. 2. The Brotherhood further alleges that Mr. Williams was not given the position for ulterior motives which the Corporation has attempted to cover up.

The Corporation maintains that it attempted to call Mr. Williams on two separate occasions during the prescribed calling hours for the vacancy but was unable to contact him. The Corporation has declined the grievance at all steps of the grievance procedure on the basis that Article 7 of the Collective Agreement was not violated.

FOR THE BROTHERHOOD:

(SGD.) T. MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Fisher – Senior Officer, Labour Relations, Montreal
C. Pollock – Senior Officer, Labour Relations, Montreal
J. Kish – Senior Advisor, Labour Relations, Customer Service, Montreal
D. Wolk – Manager, Customer Services, Winnipeg
P. Hughes – Observer

And on behalf of the Brotherhood:

A. Cerilli – Regional Vice-President, Winnipeg
R. J. Stevens – Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The first issue to be resolved in this grievance is whether the grievor was in fact available for a call on December 6, 1988 in accordance with the calling procedures established within Article 7 of the collective agreement. If the grievor was not in fact available for a call, his claim to be called for a temporary vacancy of Service Manager must be viewed as academic.

The best evidence on that issue is a document tendered by the Corporation. It has placed in evidence a log sheet maintained by the Crew Calling Clerk which records all of the calls made to spare board employees during the two-hour calling period between 0900 and 1100 hours on Tuesday, December 6, 1988. That record reveals that the grievor, Mr. Kevin Williams, was called on two different occasions, at 1005 hours and at 1039 hours, and was unable to be contacted on both occasions.

In this grievance the burden of proof is upon the Brotherhood. Absent any direct evidence to rebut the documentary proof tabled by the Corporation, I am unable to conclude that it has discharged the burden of establishing that Mr. Williams was at all material times available for the call, and that his rights under the collective agreement were violated. While he might well have had a good claim to the position of Service Manager on December 6, 1988, he cannot successfully assert such a claim where the preponderance of the evidence indicates that he was not, in any event, available to respond to a call.

For the foregoing reasons the grievance must be dismissed.

17 May 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR