CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2157

Heard at Montreal, Tuesday, 11 June 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

A request for reimbursement of airfare and incidental expenses for Messrs. St. Germain, Collins and Fontaine, who flew home from Vancouver to Winnipeg.

JOINT STATEMENT OF ISSUE:

On October 7, 1989, VIA Train 1 (ex Winnipeg) collided with an automobile at a level crossing near Irvine, Alberta. The grievors rendered first aid assistance to the injured occupants of the automobile at the accident site. After being released from the accident site by the police, the grievors returned to duty on board the train and worked the rest of the journey through to Vancouver. Upon arrival at Vancouver, the employees asked to be flown home at the Corporation's expense. They were advised that they could book sick and VIA would provide them with bedrooms and meals aboard the train to Winnipeg or they could fly home at their own expense. The employees then went to the Emergency ward of Vancouver General Hospital.

Dr. Alan Chu examined the three and recommended that they "not travel by train home."

On October 9, 1989, the grievors booked sick and flew home from Vancouver to Winnipeg.

On October 25, 1989, the Brotherhood grieved at Step 1 that the employees should be compensated for the airfare and incidental expenses incurred to return home.

The Corporation has declined the grievance at all steps of the grievance procedure.

The Corporation argues that the issue is not arbitrable as no employee has been disciplined or discharged and no article or paragraph of an article of Collective Agreement No. 2 has been violated.

The Corporation maintains that only issues contemplated in Article 25.2 may be referred to the Canadian Railway Office of Arbitration.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. MCGRATH	(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Fisher	– Senior Officer, Labour Relations, Montreal
R. Wesley	– Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock	– Senior Officer, Labour Relations, Montreal
J. Kish	– Senior Advisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

A. Cerrilli	– Regional Vice-President, Winnipeg
G. T. Murray	– Regional Vice-President, Moncton
R. Dennis	– Representative, Moncton
K. Sing	– Representative, Halifax

AWARD OF THE ARBITRATOR

The Corporation raises a preliminary objection to the arbitrability of the grievance. It submits that no provision of the collective agreement can be identified as having been violated. It submits that article 25.2 of the collective agreement limits the issues that can be brought to arbitration. It provides as follows:

> **25.2** A grievance concerning the interpretation or alleged violation of this Agreement or an appeal by an employee that he has been unjustly disciplined or discharged and which is not settled at Step 3, may be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work in accordance with the regulations of that office.

The material facts are not in dispute. The grievors were involved in a traumatic fatal accident on October 7, 1989. Their involvement in dealing with the remains of the deceased victims of the accident, as well as providing first aid to one surviving victim, caused them acute emotional and mental stress. This subsequently lead to the awarding of compensation to them for periods varying between one and two weeks by the Manitoba Workers' Compensation Board, albeit they suffered no physical injuries.

Upon arrival in Vancouver the grievors sought the Corporation's permission to return immediately by air to Winnipeg, at the employer's expense. Their request was buttressed, in part, by the opinion of Vancouver Doctor Allen Chu. The Corporation nevertheless declined, insisting that the grievors could return to Winnipeg by train at the Corporation's expense, but that any alternative method of transportation would be by their own resources.

There is no specific provision of the collective agreement which deals with the transportation rights of employees in the circumstances disclosed in the instant case. The Brotherhood seeks to rest its claim, however, on the language of article 24.21 which establishes the grievance procedure and provides, in part, as follows:

> **24.21** Any complaint raised by employees concerning the interpretation, application or alleged violation of this Agreement or that they have been unjustly dealt with shall be handled in the following manner: ...

The Brotherhood's position is that the grievor's were "unjustly dealt with" within the meaning of the foregoing provision, and that their claim in respect of that treatment is therefore arbitrable. The Brotherhood's representative further draws to the Arbitrator's attention the provisions of the **Workers' Compensation Act of Manitoba** which, at the material time, provided in article 24(17) as follows:

> **24(17)** Every employer, at his own expense, shall, upon the happening of an accident to one of his workmen, provide immediate transportation to a hospital should that be necessary or to a place where proper and adequate medical care can be given.

The Brotherhood's representative submits that the foregoing statutory obligation was violated by the Corporation in its failure to provide immediate transportation for the grievors to their own medical doctors in Winnipeg. He submits that redress for that violation should be available by means of a grievance under the collective agreement.

The Arbitrator appreciates the sentiments which motivate this grievance. The unchallenged evidence is that the grievors suffered a substantial degree of emotional trauma and did require medical attention upon their return to Winnipeg. That would suggest, at least arguably, that a thirty-six hour return train trip from Vancouver to Winnipeg was not optimal in the circumstances. However, the conclusion must nevertheless be that the grievance is not arbitrable. It was well established in a prior decision of this Office, **CROA 924**, that a claim made under the terms of article 24.21 that an employee has been "unjustly dealt with" can be carried through the grievance procedure, but that it cannot be carried beyond that point to arbitration. The reasoning of Arbitrator Weatherill in **CROA 924** clearly reflects the finding that the only matters that may proceed to arbitration are grievances "concerning the interpretation or alleged violation of this Agreement or an appeal by an employee that he has been unjustly

disciplined or discharged …" within the contemplation of article 25.2. In light of the interpretation of that language issued by this Office in **CROA 924**, in March of 1982, the parties had a settled interpretation of the provisions in question which was final and binding upon them. Although there have been subsequent renewals of the collective agreement, no change in the language of these provisions has been made. In the circumstances, therefore, the Arbitrator is compelled to conclude that no subsequent change in the meaning or intention of these provisions has been made.

Nor can the Arbitrator accept the alternative suggestion of the Brotherhood that this matter can be heard as a "policy grievance". A policy grievance, like an individual grievance or a group grievance, must, absent contrary language in the collective agreement, be grounded in the alleged violation of some provision or provisions of a collective agreement. In arbitral jurisprudence the term "policy grievance" does not connote a general objection by a trade union against a policy of the employer. Rather, it refers to a grievance brought by a union as a matter of policy because it deals with issues of general application to classes of employees within the bargaining unit, or with separate interests of the union itself, which flow from the application or interpretation of specific terms of the collective agreement. (*See, generally, Brown & Beatty,* ***Canadian Labour Arbitration*** *(3d) at p.2-58*.) Absent any provision in the collective agreement relating to the facts of the instant case, it cannot be said to be arbitrable as a policy grievance. Lastly, the Arbitrator cannot conclude that the collective agreement provides a procedural mechanism for redress of the alleged violation of the rights of the employees under the terms of the **Workers' Compensation Act of Manitoba**. Such rights as they may have in that regard fall within the exclusive jurisdiction of another tribunal.

Needless to say, the conclusions in this award with respect to the arbitrability of the grievance are entirely without prejudice to such rights as the grievors may have in that regard.

For the foregoing reasons the grievance must be dismissed.

June 14, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR