

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2176

Heard at Montreal, Tuesday, 10 September 1991

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for loss of earnings for Mr. H. A. Ali who attended rules examinations on September 1, 1987 in Toronto.

JOINT STATEMENT OF ISSUE:

Mr. Ali is a Conductor assigned to the Windsor Terminal and is required to write a test on the Uniform Code of Operating Rules every two years on the anniversary date of his last having written the test. He was due to write this test on or before August 18, 1987. He was also scheduled for and commenced vacation from August 7 to 31, inclusive, and he did not attend rules examination classes before or during his vacation.

As a consequence of his not having written the test and hence not qualified to work upon his return from vacation, Mr. Ali was held off his scheduled run for September 1, 1987, and instead, attended rules classes in Toronto.

It is the Union's position that Mr. Ali has suffered a loss of earnings and has requested that the claim be paid.

It is the Corporation's position that Mr. Ali had ample opportunity to attend rules examinations prior to going on vacation but chose otherwise. The Corporation has therefore declined the claim.

FOR THE UNION:

(SGD.) T. G. HODGES
GENERAL CHAIRPERSON

FOR THE CORPORATION:

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

There appeared on behalf of the Corporation:

K. Taylor – Senior Labour Relations Officers, Montreal
A. Richard – Observer

And on behalf of the Union:

M. P. Gregotski – Vice-General Chairperson, Fort Erie
T. G. Hodges – General Chairperson, Fort Erie
P. Ethier – Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

The material establishes, to the satisfaction of the Arbitrator, that there were a number of opportunities available to the grievor to write a test of the Uniform Code of Operating Rules before the expiry date of his rules accreditation, and prior to his departure on vacation in the summer of 1987. Bearing in mind that it is the responsibility of the grievor himself to ensure that his rules qualifications remain current, it is my view not unreasonable to expect that he would have displaced himself from Windsor to Sarnia, London or St. Thomas for rules instruction and examination opportunities which were available on his days off, when the only rules examination date available in Windsor conflicted with his working schedule. There is nothing before the Arbitrator to suggest that he would have been prevented from attending the instruction and examination sessions outside Windsor, and it would appear that had he done so he would have been entitled to claim some compensation under the terms of Article 71 of the collective agreement. Most importantly, the Union has pointed to no provision of the collective agreement which would require the Corporation to compensate the grievor for his rules classes in Toronto on September 1, 1987, when it is agreed he was unqualified to work and must, of necessity, be held off his normal assignment.

In the circumstances, while it is true that he suffered a loss of earnings, it was a circumstance of his own making. In coming to this conclusion the Arbitrator notes that even after he was denied the opportunity to book off work to attend the rules instruction and examination at Windsor on July 29, 1987, there were additional testing opportunities available to him at St. Thomas, Ontario during the month of August, prior to his return to active service.

For the foregoing reasons the grievance must be dismissed.

September 13, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR