CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2227

Heard at Montreal, Thursday, 16 January 1992

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

A policy grievance concerning the relocation of Vancouver-based employees to Winnipeg.

BROTHERHOOD'S STATEMENT OF ISSUE:

Following the issuance of the Article J notice to the Brotherhood on October 12, 1989, the Corporation and the Brotherhood agreed to a Special General Bid, during which all positions to be established following the service reductions would be bulletined. The procedures to be followed and the process of the General Bid was presented to the Local Chairpersons on November 27, 1989. The status of spareboard positions as regular assignments for employment security purposes was to be communicated to Corporation Officers at the terminals where spareboards are maintained.

The Brotherhood contends that five senior employees (Baxter, Hendricks, Johnson, Kurlilack and Wallace) relocated unnecessarily and that a number of senior employees opted for early retirement predicated on the belief that their only other option was to exercise their seniority to Winnipeg. The Brotherhood contends that the employees were unjustly dealt with since they were forced to accept assignments and relocate from Vancouver to Winnipeg. Had the senior OTS employees been advised in a timely manner of the above, they could have fulfilled their obligations to the employment security provisions of the Special Agreement by accepting assignments of the Vancouver spareboard.

The Corporation contends that the employees exercised their seniority and were awarded positions in line with their qualifications and seniority. The Corporation does not believe that any article of the Collective Agreement or the Supplemental Agreement or the Special Agreement or the Memorandum of Agreement was violated and, therefore, does not believe that the dispute is arbitrable

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

There appeared on behalf of the Corporation:

D. Fisher	– Senior Officer, Labour Relations, Montreal
M. St. Jules	– Senior Negotiator and Advisor, Labour Relations, Montreal
C. Pollock	– Senior Officer, Labour Relations, Montreal
J. Kish	– Senior Advisor, Customer Services, Montreal
C. Gould	– Senior Advisor, Plant Maintenance, Montreal

And on behalf of the Brotherhood:

P. Askin	– Representative, Vancouver

AWARD OF THE ARBITRATOR

The sole issue before the Arbitrator is whether the grievance is arbitrable. The Brotherhood alleges that the Corporation violated the administration of the collective agreement in the manner in which it implemented the bidding process pursuant to the national bulletin conducted under the Memorandum of Agreement of November 19, 1989. Specifically, it maintains that five employees relocated from Vancouver to Winnipeg in the belief that they could not protect any positions at Vancouver, so as to safeguard their employment security status. The Brotherhood alleges that the employees were not made aware of the fact that, as part of the terms of the Memorandum of Agreement, spareboard positions at Vancouver were to be treated as regular assignments for the purposes of employment security. In essence, the Brotherhood submits that the Corporation violated the Memorandum of Agreement, and presumably by extension, the collective agreement, by failing to properly advise the employees that spareboard positions at Vancouver could be taken prior to bidding on positions at another location, such as Winnipeg.

The grievance, as framed and presented by the Brotherhood, is premised on the argument that it is the Corporation's obligation to notify the employees of the meaning and content of the Memorandum of Agreement as it might affect their bidding options. The Arbitrator has some difficulty with the submission of the Brotherhood as regards the purported obligation of the Corporation to instruct and advise employees as to the exercise of their rights under the collective agreement or under the Memorandum of Agreement of November 19, 1989.

The Memorandum of Agreement is a document jointly authored by the Corporation and the Brotherhood. While it is true that the Corporation is not at liberty to mislead employees with respect to their rights, or to otherwise unduly frustrate their ability to exercise those rights, it is an arguably different matter to maintain, as the Brotherhood implicitly does, that the employer has a contractual obligation to advise and counsel employees in the exercise of their rights under a document that is the product of collective bargaining. That, in the normal course, is the role to be played by the Brotherhood as a normal incident of its duty of representation. In the instant case the gist of the Brotherhood's complaint is that the Corporation failed to advise the employees in Vancouver that the Vancouver spareboard positions were considered to be regular positions for employment security purposes. The material before the Arbitrator, however, discloses that the availability of spareboard positions as regular assigned positions for the purposes of employment security was a matter of general knowledge to the extent that it was an express part of the Memorandum of Agreement of November 19, 1989, which was in the possession of both the Corporation and the Brotherhood. It appears, moreover, that the content of that provision was reiterated in a special awards bulletin posted on December 20, 1989.

In the circumstances the Arbitrator must agree with the position of the Corporation that the Brotherhood's case, even if proved, would establish no violation of any provision of the collective agreement, or of the Memorandum of Agreement of November 19, 1989. The Arbitrator must therefore find that the grievance is not arbitrable, and is to be dismissed.

January 17, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR