

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2293

Heard at Montreal, Thursday, 15 October 1992

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims by various Toronto spareboard employees due to Mr. B. Fletcher exercising his seniority to transfer from CN to VIA.

JOINT STATEMENT OF ISSUE:

On August 29, 1991 Mr. B. Fletcher was released from his excepted position at CN and exercised his seniority to VIA under the Memorandum of Agreement dated June 4, 1987.

As a consequence, various locomotive engineers on the VIA spareboard at Toronto submitted claims for Mr. Fletcher's alleged improper exercise of seniority.

It is the Brotherhood's position that Mr. Fletcher must first establish himself as a locomotive engineer at CN and then bid for future vacancies at VIA.

It is the Corporation's position that Mr. Fletcher's exercise of seniority was proper.

FOR THE BROTHERHOOD:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Corporation:

K. Taylor	– Senior Negotiator and Advisor, Labour Relations, Montreal
J. Ouellet	– Labour Relations Officer, Montreal
C. Rouleau	– Labour Relations Officer, Montreal
J-P Maheux	– Trainmaster, Montreal

And on behalf of the Brotherhood:

C. Hamilton	– General Chairman, Kingston
J. Tofflemire	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that Mr. Fletcher was entitled to the protections of the Transfer Agreement between the Canadian National Railway Company, the Corporation and the Brotherhood. Included in those rights is the benefit of bidding for service in VIA Rail during the reciprocal rights period provided for in item 4 of the Transfer Agreement. When those provisions are read together with article 45.10 of the collective agreement, which protects the accumulation of Mr. Fletcher's seniority rights while on leave from the bargaining unit in CN, the Arbitrator must accept the submission of the Corporation that he was entitled to exercise those rights upon the conclusion of his leave of absence. The rights which Mr. Fletcher enjoyed are no less than those of any other locomotive engineer in the employment of CN, including the rights available to him under the Transfer Agreement. There is nothing in the material before the Arbitrator which would justify the submission of the Brotherhood that Mr. Fletcher's rights upon the conclusion of his leave of absence must be limited to service as a locomotive engineer within CN. On the contrary, I am satisfied that Mr. Fletcher was entitled to avail himself of positions bulletined to both VIA and CN employees during his absence, and which were awarded to employees junior to Mr. Fletcher.

For the foregoing reasons the grievance must be dismissed.

October 16, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR