

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2298

Heard at Montreal Wednesday, 11 November 1992

concerning

VIA RAIL CANADA INC.

and

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

EX PARTE

DISPUTE:

Designation of out-front positions as bilingual in the Montreal-Ottawa-Toronto corridor, and at Guildwood Station.

CORPORATION'S STATEMENT OF ISSUE:

On March 21, 1992, the parties signed a Letter of Understanding to the effect that if the parties could not reach an agreement with respect to the designation of specific on-train positions in the Montreal-Ottawa-Toronto and off-train positions in Guildwood, that the matter would be referred to the Canadian Railway Office of Arbitration for final and binding resolution, with respect to the appropriateness of the Corporation's requested designations.

The parties met on July 8, 1992, but could not reach agreement on the Corporation's proposal to designate as bilingual 17 Senior Service Attendants in Montreal, 14 Senior Service Attendants in Toronto, and three positions of Counter Sales Agent at Guildwood Station.

The Brotherhood, while willing to reach an agreement on the Guildwood positions, maintains that the Corporation should reclassify the proposed designated on-train positions to that of Assistant Service Coordinator.

The Corporation maintains that its request is reasonable, appropriate and within the parameters of Appendix D of Collective Agreement No. 1 and Appendix 6 of Collective Agreement No. 2.

BROTHERHOOD'S STATEMENT OF ISSUE:

On March 21, 1992, the parties signed a Letter of Understanding to the effect that if the parties could not reach an agreement with respect to the designation of specific on-train positions in the Montreal-Ottawa-Toronto corridor and off-train positions in Guildwood, that the matter would be referred to the Canadian Railway Office of Arbitration for final and binding resolution, with respect to the appropriateness of the Corporation's requested designations. The parties met on July 8, 1992, but could not reach agreement on the Corporation's proposal to designate as bilingual 17 Senior Service Attendants in Montreal, and 14 Senior Service Attendants in Toronto, and three positions of Counter Sales Agent at Guildwood Station.

The Brotherhood, while convinced that perhaps an agreement may be able to be reached on the Guildwood positions, maintains that the Corporation could utilize additional Assistant Service Co-ordinators, an already bilingually-designated on-train position, further emphasizing that it really has not been shown that the status quo has failed to fulfill the needs.

The Corporation maintains that its request is reasonable, appropriate, and within the parameters of Appendix D of Collective Agreement No. 1 and Appendix 6 of Collective Agreement No. 2.

FOR THE BROTHERHOOD

FOR THE CORPORATION:

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

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

There appeared on behalf of the Corporation:

- M. St-Jules – Senior Advisor & Negotiator, Labour Relations, Montreal
- C. Pollock – Senior Labour Relations Officer, Montreal
- J. R. Kish – Senior Advisor, Labour Relations, Montreal
- C. Biche – Department Director, Employment Equity and Official Languages, Montreal

On behalf of the Brotherhood:

- T. N. Stol – National Vice-President, Ottawa
- R. J. Stevens – Regional Vice-President, Toronto
- A. Della Pinna – Local Chairperson, Montreal

And as observers:

- L. Jarry – Program Officer, Treasury Board, Direction of Official Languages Branch, Ottawa
[sic]
- L. Martel – Investigating Officer, Office of the Commissioner of Official Languages, Ottawa

AWARD OF THE ARBITRATOR

This matter comes to this Office by special reference pursuant to a Letter of Understanding between the parties dated May 21, 1992. It concerns the resolution of the dispute with respect to the means of providing bilingual service in coaches in the Montreal-Ottawa-Toronto corridor and in off-train passenger service at Guildwood Station. The Letter of Understanding reads as follows:

LETTER OF UNDERSTANDING between the Canadian Brotherhood of Railway, Transport & General Workers and VIA Rail Canada Inc., concerning the designation of certain out-front positions as bilingual in the Montreal-Ottawa-Toronto corridor (on-train) and at Guildwood Station.

This letter is commitment by the parties to meet re the designation of bilingual positions in the coaches in the Montreal-Ottawa-Toronto corridor (on-train) and at Guildwood Station, as contemplated in Appendix “D” of Collective Agreement No. 1 and in Appendix “6” of Collective Agreement No. 2, in the following manner:

- (a) The parties specifically agree to commence discussions on designation of these bilingual positions within thirty (30) days of the signing of this Letter of Understanding.
- (b) Should the parties not be able to reach an agreement on this matter within sixty (60) days from the commencement of the discussions, the matter shall be referred to the Canadian Railway Office of Arbitration for final and binding resolution, with respect to the appropriateness of the Corporation’s requested designations.

Signed in Montreal, Quebec, this 21st day of may 1992.

FOR THE BROTHERHOOD**(SGD.) T. N. STOL**

NATIONAL VICE-PRESIDENT, CBRT&GW

(SGD.) R. J. STEVENS

REGIONAL VICE-PRESIDENT, CBRT&GW

(SGD.) A. S. WEPRUNK

ACTING REGIONAL VICE-PRESIDENT, CBRT&GW

FOR THE CORPORATION:**(SGD.) C. C. MUGGERIDGE**

DEPARTMENT DIRECTOR, LABOUR RELATIONS

The history of the dispute is not in question. In late August and early September of 1990 a passenger travelling between Montreal and Stratford, Ontario filed a complaint with the Commissioner of Official Languages because general announcements and safety announcements on her trains, in both directions between Montreal and Toronto were made in English only. It appears that she also filed a complaint with respect to the absence of service in French on the platform at Toronto Union Station. A formal investigation by the office of the Commissioner ensued and, when the Corporation's explanations were found to be unsatisfactory, the Commissioner's office commenced an action before the Federal Court of Canada for the enforcement of the relevant provisions of the **Official Languages Act**. There is no suggestion that the Commissioner's act was prompted by a single incident. It is common ground that similar complaints had been voiced persistently over the course of thirteen years, particularly in the Montreal-Ottawa-Toronto triangle. It is not disputed that the Corporation's failure to provide French language services within that geographic area gave rise to a substantial number of complaints in the months and years immediately preceding the actions of the Commissioner of Official Languages.

There is no dispute between the parties with respect to the need to provide service in both official languages to passengers travelling within the Montreal-Ottawa-Toronto triangle. The only issue before the Arbitrator is the appropriate means to accomplish that end. In April of 1991 the Corporation suggested to the Brotherhood the designation of one of the two club car positions on each train as bilingual. The Brotherhood countered with the suggestion that one of the club car positions be upgraded to the classification of Assistant Service Coordinator, a pre-existing bilingual classification. It appears that at a later stage the Brotherhood proposed the creating of an additional ASC position in the club car, a proposal which it has since abandoned.

In the absence of an agreement, as a short term measure, the Corporation unilaterally established the position of Assistant Service Coordinator, which is a bilingual position, as one of the two positions on each club car operating in the Montreal-Ottawa-Toronto triangle. That measure, which obviously made no direct impact on service in coach class, did not satisfy the Commissioner. On May 21, 1991 the Corporation was advised of the Commissioner's intention to carry on with the application before the Federal Court, pursuant to section 18 of the **Official Languages Act**. Subsequently, at the request of the Corporation, the Brotherhood and the United Transportation Union, which represents Conductors and Assistant Conductors, the Federal Court agreed to delay its consideration of the application before it, to give the parties an opportunity to reach an agreement on an appropriate means of providing bilingual services.

The ensuing discussions between the Corporation and the UTU were soon successful. By March 18, 1992 the UTU had agreed to a staffing arrangement for the triangle whereby on all trains either the conductor or the assistant conductor must be able to provide service to passengers in either official language. This arrangement appears to have been viewed as satisfactory by the Commissioner, as the record before the Arbitrator indicates that its action in the Federal Court is withdrawn as regards running trades employees represented the United Transportation Union.

The action remains outstanding, however, with respect to the services provided by employees represented by the Brotherhood. Ongoing negotiations between the parties to attempt to resolve their dispute as to the appropriate method of achieving bilingual service were unsuccessful, even when they became part of their general negotiations for the renewal of the collective agreements. In the result, by the Letter of Understanding of May 21, 1992 the parties vested in this Office the jurisdiction to make a "... final and binding resolution, with respect to the appropriateness of the Corporation's requested designations."

The jurisdiction of this Office is plainly circumscribed by the language of the Letter of Understanding. The issue is not whether the proposal of the Corporation is in compliance with the **Official Languages Act**, a question plainly for other authorities. Nor is the issue what system would, in the Arbitrator's opinion, best achieve the avowed goal of

bilingual service. The grant of jurisdiction to the Arbitrator is, quite fittingly, more confined. It concerns only the issue of the “appropriateness” of the Corporation’s requested designations of bilingual positions.

While the term “appropriateness” is arguably broad, it is obvious, I think, that this Office is called upon to weigh the appropriateness of the Corporation’s proposal primarily from the perspective of industrial relations, bearing in mind, of course, the realities of public law and sound business policy within which the parties’ collective agreement must operate. In that context, it seems to the Arbitrator that the assessment of “appropriateness” necessitates a balancing of interests. The obvious need of the Corporation to respond to the imperatives of the **Official Languages Act** is beyond discussion. The means of achieving that end, however, are not. In this regard employee and union interests such as the protection of job security, established seniority rights and measures to minimize the adverse impact of any change on employees are factors, among others, which bear on the appropriateness of the Corporation’s proposal from a labour relations perspective. So too is the primary issue raised by the Brotherhood, which concerns the classification and level of remuneration for any bilingual positions which are to be established.

It should be noted, for the record, that the shared concern of the parties with respect to providing bilingual service to the travelling public is long standing. Appendix D of Collective Agreement No. 1 (off-train employees) and Appendix 6 of Collective Agreement No. 2 (on-board services) reflect their common undertaking, from the mid 1980’s, to promote and enhance bilingual services in both on-board and off-board services. Additionally, in Appendix 9 of Collective Agreement No. 2, the parties agreed to establish the position of Assistant Service Coordinator in on-board service, a position specifically designated as bilingual. Unfortunately, the efforts of the parties have encountered a number of reversals and administrative difficulties. The initiative of the federal government which resulted in the reduction of VIA’s work force by some 40% as of January 15, 1990, greatly impacted the Corporation’s capacity to provide bilingual services in the Montreal-Ottawa-Toronto triangle. Since the mid 1980’s, the Corporation’s recruiting policy was directed to hiring, insofar as possible, bilingual employees for service in the triangle area. Unfortunately, with the reduction in service forced upon the Corporation in 1990, many newly-hired bilingual employees with limited seniority were among the first to be laid off. Additionally, the workability of the Assistant Service Coordinator position was somewhat limited. The person so classified is generally assigned to club car service. As a result, in trains without a club car, or in coach class, direct access to French language service could not always be assured.

The Brotherhood submits that the position of Assistant Service Coordinator should be looked to as the primary means for extending bilingual service on trains in the triangle area. Its representative submits that the way to satisfy the concerns of the Commissioner of Official Languages is to upgrade at least one Senior Service Attendant in coach class service to the higher rated classification of Assistant Service Coordinator, a position which is already designated as bilingual. The Brotherhood submits that it would be anomalous to establish lower paid bilingual positions in coach class, for example by designating certain Senior Service Attendant positions as bilingual, if the result is that bilingual employees working in the club car in the classification of Senior Service Attendant are more highly remunerated than bilingual Senior Service Attendants working in coach class. On that basis it submits that the proposal of the Corporation is not appropriate.

The Corporation’s proposal, as it appears in the brief submitted to the Arbitrator, is as follows:

Recognizing the need of the Corporation to provide a bilingual service to our passengers in line with the Official Languages Act, the parties agree to (a) designate as bilingual one Senior Service Attendant in the coaches on all trains operating between Montreal-Ottawa-Toronto, and (b) two positions of Counter Sales Agent and one position of Senior Counter Sales Agent at Guildwood, Ontario, under the following conditions:

- The total number of Senior Service Attendant positions to be designated bilingual are 17 in Montreal and 14 in Toronto.
- The filling of the designated positions will commence as the existing positions become vacant due to retirement, resignation, death, dismissal, bidding off and general bid.
- The filling of the bilingual positions with bilingual employees will not result in a regularly assigned unilingual employee being required to operate from the spareboard in order to hold work.

- The filling of the designated bilingual positions will not result in employees being laid-off solely because they are not bilingual.
- Vacancies in the designated bilingual positions required to be filled from the spareboard will first be filled by qualified bilingual employees on the spareboard, and then unilingual qualified employees recognizing the first-in, first-out principle.
- Bilingual employees who are working on other positions will not be forced to fill designated bilingual positions.
- Present occupants of the designated bilingual positions who are rated at the “C” level in the French language, and whose test results indicate that they could achieve bilingual status with a minimum of exposure to French immersion training, will be offered the opportunity to such training.

In the Arbitrator’s view the Corporation’s proposal has much to commend it, from an industrial relations standpoint. Significantly, pursuant to its proposal employees who are not bilingual are protected against down-grading or lay-off, and the change is to be implemented by a process of eventual attrition. In the result, thirty-one of sixty-two regular Senior Service Attendant positions in the coaches in the Montreal-Toronto corridor will be designated bilingual. It appears to the Arbitrator that the overall impact of the Corporation’s proposal is to achieve a significant degree of bilingual service while respecting the job security of unilingual employees who would otherwise be adversely affected.

Is there significant inappropriateness in the Corporation’s preference to designate Senior Service Attendant’s positions as bilingual, rather than up-grade coach class positions to Assistant Service Coordinator, as the Brotherhood proposes? I think not. The Arbitrator is mindful of the historic origins of the position of Assistant Service Coordinator, which date to passenger service under the Canadian National Railway, whereby the crews of transcontinental trains were required to include a minimum of one bilingual employee in that designation. However, the case for extending the designation to coach class service in inter-city trains within the triangle area is less than compelling. A review of the duties and responsibilities of the Assistant Service Coordinator reveals that the higher rate of pay associated with that position is not predicated solely on the providing of bilingual services. The Assistant Service Coordinator bears particular responsibility in assisting the Service Manager and Service Coordinator in all aspects of services on board and may, at times, assume the duties of a Service Coordinator in meal service. The position also bears particular responsibilities with respect to safety and first-aid. It is far from clear to the Arbitrator that the need to extend bilingual service necessarily justifies the extension of all of the higher duties and responsibilities of the Assistant Service Coordinator into coach class service on all trains.

There is, moreover, no sound business or collective bargaining purpose in isolating the requirement of the bilingual designation within a single classification in the collective agreement. Given the realities and public expectations in Canada in the 1990’s, it is reasonable for the travelling public to expect to receive service in both official languages from more than simply one rank of personnel in on-board service. On the whole, it appears to the Arbitrator that the Corporation’s wish to have the widest possible availability of bilingual services, among a number of ranks of employees in on-board service, including Senior Service Attendants, is reasonable and is clearly defensible in light of its legitimate business interests. For the reasons touched upon above, I am satisfied that the proposal which it advances strikes a fair and compelling balance between the railway’s obligations to the travelling public under the **Official Languages Act** and the concerns of its employees with respect to the protections to which they are entitled under the terms of the collective agreements.

Before the Arbitrator there was little discussion of the substance of the parties’ disagreement with respect to the designation of the Counter Sales Agent positions at Guildwood Station. In the absence of any substantial argument to cast doubt upon the appropriateness of the Corporation’s proposals in that regard, I can see no basis to reject them.

For the foregoing reasons the Arbitrator finds and declares that the proposals for the requested designations put forward by the Corporation in compliance with the Letter of Understanding of May 21, 1992 are in all respects appropriate, and the position of the Corporation is therefore allowed. I retain jurisdiction should there be any dispute between the parties having regard to the interpretation or implementation of this award.

November 13, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR