

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2369

Heard at Montreal Thursday, 13 May 1993

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

The entitlement of Mr. Y. Themens to both a lump sum payment under the provisions of Article D.7 and payment for reimbursement for the loss sustained on the sale of a home under Article D.8 of the Special Agreement.

JOINT STATEMENT OF ISSUE:

Mr. Themens was required to relocate from Montreal to Vancouver under the provisions of the Special Agreement. The grievor maintains that at the time of his relocation, he was not informed that if he opted for a lump sum payment under Article D.7, that he would forfeit a reimbursement for the loss sustained on the sale of his home under the provisions of D.8.

At Step 3, the Brotherhood claimed that the lump sum payment described in Article D.7 does not abrogate an employee's entitlement to the benefits of Article D.8.

The remedies sought by the Brotherhood are \$9,000.00, representing the loss on the sale of the grievor's home and \$1,500.00 for apartment rent with interest.

The Corporation maintains that Article D.7 clearly states that the lump sum payment provision specifically excludes the benefits provided for in Article D.8 of the Agreement.

The Corporation further maintains that the grievor received the lump sum payment that he had elected and that there is no provision in the Special Agreement for the payment of rent or interest. Furthermore, the Corporation submits that the grievance is untimely as the grievor was issued a first lump sum quarterly payment on December 20, 1991, and only grieved the matter on May 1, 1992.

FOR THE BROTHERHOOD:

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

FOR THE CORPORATION:

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

There appeared on behalf of the Corporation:

- C. Pollock - Senior Officer, Labour Relations, Montreal
- D. S. Fisher - Senior Negotiator & Advisor, Labour Relations, Montreal
- J. R. Kish - Senior Advisor, Labour Relations, Montreal
- C. Rouleau - Senior Officer, Labour Relations, Montreal
- H. Lepage - Officer, Relocation Program, Montreal
- D. Depelteau - Officer, Human Resources, Procedures and Services, Montreal
- P. Gebauer - Coordinator, Policies and Procedures, Montreal

And on behalf of the Brotherhood:

- T. N. Stol - National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The Arbitrator cannot sustain the interpretation of articles D.7 and D.8 of the Special Agreement argued by the Brotherhood on behalf of Mr. Themens. Article D.8 provides for coverage to a maximum of \$9,000.00 for a loss sustained on the sale of the home of an employee who relocates. Article D.7 makes provision for a lump sum payment and provides, in part, as follows:

If an employee who is required to relocate to hold employment does not wish to move his household to his new work location, he may, at the time of the change, opt for a lump sum payment. Such lump sum payment shall be mutually agreed upon by the parties and will be no less than the value of all contractual relocation benefits other than those provided for in Articles D.6, D.8, D.9 and D.10. ...

In the Arbitrator's view the foregoing language reflects the understanding of the parties that the employee is put to an election. That flows naturally from the use of the words "... he may ... opt for a lump sum payment". The employee affected is put to an election, which implies that he chooses one set of benefits or another. That conclusion is reinforced by the concluding phrase of the passage reproduced above, which confirms that the lump sum payment is to exclude the protections provided for in articles D.6, D.8, D.9 and D.10. That conclusion, moreover, appears to be amply supported by the practice between the parties, both under this Special Agreement and under prior special agreements.

Finally, the Arbitrator cannot accept the suggestion of the Brotherhood that the Corporation was under an obligation to give a written explanation to the grievor that he would be precluded from the protections of article D.8 should he elect to take the lump sum payment. Firstly, it would appear that he was so advised verbally by representatives of the Corporation who were dealing with him at the time. Secondly, even if he had not been so advised, he must be deemed to be familiar with the contents of the Special Agreement as it applies to him and to the Brotherhood (*see CROA 2227*).

For these reasons the grievance must be dismissed.

May 14, 1993

(signed) MICHEL G. PICHER
ARBITRATOR