

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2393

Heard at Montreal, Wednesday, 15 September 1993

concerning

VIA RAIL CANADA INC.

and

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

EX PARTE

DISPUTE:

The reduction of the Maintenance of Earnings guarantee of spare employee Mr. C. Gauthier, when he was not available during calling hours of January 17, 1992.

BROTHERHOOD'S STATEMENT OF ISSUE:

On January 17, 1992, Mr. Gauthier was not available when called from the spareboard for an assignment on Train 26, January 17 and Trains 21-24-27 on January 18, 1992. His guarantee was reduced by 22 hours and 15 minutes, the O.R.S. hours of the trip missed and his name was returned to the bottom of the spareboard at midnight on January 17, 1992. On January 18, 1992, Mr. Gauthier was called for stand-by duty of four hours between 0800 and 1200 hours on January 19.

The Brotherhood contends that Mr. Gauthier should only have lost five hours and 30 minutes because he was placed back on the spareboard as of midnight January 17, 1992 under article 7.7(b). The Brotherhood argues that under no circumstances can Mr. Gauthier be penalized for 16 hours and 35 minutes for January 18, 1992 under article 7.7(c). The Brotherhood contends either 7.7(b) or 7.7(c) applies, but not both.

The Corporation maintains that the reduction from the grievor's guarantee was in keeping with the principle of article E of the Special agreement.

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:

- C. Pollock - Senior Labour Relations Officer, Montreal
- C. Rouleau - Senior Labour Relations Officer, Montreal
- J. R. Kish - Senior Advisor, Labour Relations, Montreal
- R. DeWolfe - Manager, On-Train Services, Toronto

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

Articles 7.7(b) and (c) read as follows:

- (b) If employees cannot be contacted during call hours, their names will be placed at the bottom of the spare board as of midnight that day.
- (c) If employees refuse a call, their names will remain off the spare board, until the earliest time the employees who were assigned to the run would return, at which time their names will be placed at the bottom of the spare board in the order they would have arrived.

In the case at hand it is not disputed that the grievor did not refuse a call, but rather was unavailable to be contacted during calling hours. In the result, the Corporation placed his name at the bottom of the spareboard as of midnight on January 17, 1992.

In the circumstances the Arbitrator cannot accept the submission of the Brotherhood that in fact the Corporation applied article 7.7(c) to Mr. Gauthier. That provision speaks solely to the liabilities of employees who refuses a call, and has no application to the circumstances of Mr. Gauthier.

The material before the Arbitrator discloses that the Corporation reduced Mr. Gauthier's maintenance of earnings incumbency by 22 hours and 15 minutes, being the hours of the trip missed upon his initial call on January 17. The purpose for that action, which in the Arbitrator's view is appropriate and in keeping with the principles of the Special Agreement with respect to the preservation of maintenance of earnings protection, bears no relation to the operation of article 7, which governs the right of employees to placement on the spareboard. The penalty which an employee may suffer if he or she is unavailable for a call, insofar as his or her maintenance of earnings protection is concerned is an entirely separate matter from the penalty which he or she may suffer in respect of spareboard placement for the same incident.

Moreover, the material before the Arbitrator reflects an understanding reached between the Brotherhood and the Corporation, apparently in the settlement of grievance on a different region, whereby it was agreed that the Corporation was "... prepared to adopt the Brotherhood's position that spareboard employees, whether on maintenance of earnings or formally on ES status, who could not be contacted pursuant to article 7.7(b) would have their names placed at the bottom of the spareboard as at midnight that day, in accordance with the Collective Agreement." It appears that that settlement was reached pursuant to a protest by the Brotherhood of the prior practice of the Corporation to apply article 7.7(c) to a person in the circumstance of Mr. Gauthier with respect to his or her spareboard placement.

On the whole the Arbitrator cannot see any basis to sustain the grievance. The Corporation did not violate article 7.7 when it returned Mr. Gauthier to the spareboard at the time it did, nor did it derogate from the terms of the Special Agreement governing the protection of maintenance of earnings. For these reasons the grievance must be dismissed.

September 17, 1993

(sgd.) MICHEL G. PICHER
ARBITRATOR