CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2458

Heard in Montreal, Tuesday, 8 March 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]

EX PARTE

DISPUTE:

Applicability of article 79 concerning the abolishment of Brakeman's positions in GO service.

COMPANY'S STATEMENT OF ISSUE:

The Company served notice pursuant to article 79 – Material Change in Working Conditions to abolish all brakeman's positions in GO service in Toronto.

The Union contends article 79 is not applicable in these circumstances and contends the reduction of brakeman positions cannot be accomplished through a notice pursuant to article 79.

The Company disagrees.

FOR THE COMPANY:

(SGD.) D. W. COUGHLIN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

K. Peel	– Counsel, Toronto
A. E. Heft	– Manager, Labour Relations, Toronto
D. W. Coughlin	– Manager, System Labour Relations, Montreal
D. Nunns	– Superintendent, GO Operations, Toronto
L. Caron	– System Labour Relations Officer, Montreal
H. Koberinski	– Coordinator, Special Projects Business Planning, Toronto
J. B. Dixon	– System Labour Relations Officer, Montreal
V. J. Vena	– Coordinator, Transportation Special Projects, Montreal
B. Olson	– Observer

And on behalf of the Union:

M. Church	– Counsel, Toronto
M. P. Gregotski	– General Chairperson, Fort Erie
G. Bird	– Vice-General Chairperson, Montreal
W. G. Scarrow	– General Chairperson, Sarnia
M. J. Hone	– Vice-President, UTU-Canada, Ottawa
F. Garant	– Vice-General Chairperson, Montreal

R. Michaud – Provincial Legislative Chairperson, Montreal

AWARD OF THE ARBITRATOR

The Company provides running trades crews to operate GO trains in commuter service provided in the Toronto area by a crown agency of the Government of Ontario. To date the crews have comprised locomotive engineers, conductors and brakepersons. On August 13, 1993 the Company gave written notice to the Union's General Chairperson of its intention to abolish all thirty-four brakeperson positions and to operate with a conductor only, in GO service at Toronto, effective November 13, 1993. The notice was provided pursuant to article 79 of the collective agreement, governing material change in working conditions.

In discussions with the Company, first held on August 26, 1993, the Union advised the employer that it considered the notice under article 79 of the collective agreement to be improper. There ensued several months of fruitless discussions. The Union maintained throughout that the terms of article 79 of the collective agreement were not contemplated for so sweeping a change as the abolition of an entire classification of employees in a particular service. It took the position that the reduction of crew consists is a matter to be raised for separate negotiation at the national bargaining table, and not one which can be characterized as a material change within the meaning of article 79 of the collective agreement. Assuming that article 79 does apply, the Union also questioned whether the notice should be provided to the General Chairperson responsible for yard employees who would, ultimately, be impacted by the flow of redundant brakepersons into yard service. The Union also expressed concerns about the safety of operations with a conductor only in GO service.

For its part, the Company maintained that its intentions were squarely within the ambit of article 79 of the collective agreement. The employer submits that the modification and transfer of certain duties previously performed by brakepersons to other employees, coupled with the installation of strip alarms in the GO train coaches for passenger safety, would justify the elimination of the brakeperson. It is common ground that the strip alarm, now installed in all GO coaches, permits passengers to activate an alarm in the event of any emergency or disturbance. The alarm alerts the crew as to the need for assistance. This, the Company submits, substantially eliminates the need for the security patrol duties previously performed by brakepersons through the coaches.

As the parties were unable to resolve their dispute, the Company progressed it to arbitration. The issue before the Arbitrator is the appropriate procedure to be followed by the Company, under the terms of the collective agreement, with respect to implementing a general reduction in the crew consists in GO train service at Toronto. The Company submits that giving notice under the material change provisions of article 79 of the collective agreement is the procedure to be followed. The Union submits, firstly, that a reduction in crew consists, implemented across the board in a particular classification of service, must be the subject of national negotiations, of the kind which would result in a special agreement or in the amendment of the collective agreement. Alternatively, it argues that the Company is compelled to follow the provisions governing the reduction of consists of crews in passenger train service found in Addendum No. 63 to the collective agreement. Specifically, it submits that Addendum No. 63 must be read and applied in conjunction with Addendum Nos. 64 and 64A as well as article 11 of the collective agreement.

Article 79 of the collective agreement provides, in part, as follows:

> **79.1** The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairperson concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon the employees

concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with this paragraph.

(a) the Company will negotiate with the Union measures other than the benefits covered by paragraphs 79.2 and 79.3 to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in Agreement provisions considered necessary for the implementation of a material change is also subject to negotiation;

(b) while not necessarily limited thereto, the measures to minimize adverse effects considered negotiable under sub-paragraph (a) of this paragraph may include the following:

(1) Appropriate timing
(2) Appropriate phasing
(3) Hours on duty
(4) Equalization of miles
(5) Work distribution
(6) Adequate accommodation
(7) Bulletining
(8) Seniority arrangements
(9) Learning the road
(10) Eating en route
(11) Work en route
(12) Layoff benefits
(13) Severance Pay
(14) Maintenance of basic rates
(15) Constructive miles
(16) Deadheading

The foregoing list is not intended to imply that any particular item will necessarily form part of any agreement negotiated in respect of a material change in working conditions.

...

(k) When Material Change Does Not Apply

This Article does not apply in respect of changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, traditional reassignments of work or other normal changes inherent in the nature of the work in which employees are engaged.

The provisions of article 79 further contemplate a process of negotiations to take place between the parties with respect to agreeing upon the measures necessary to minimize adverse effects upon employees as a result of the material change. Failing agreement, they may proceed to a board of review and, ultimately, to arbitration for the resolution of their dispute.

Article 11 of the collective agreement governs the consist of crews in passenger service. In respect of crew consists, article 11.1 provides, in part, as follows:

11.1 In accordance with the provisions of Addendum No. 63 of this Agreement, crew consists in passenger service shall be as follows:

Train Consist	**Crew Consist**

(a)	one Rail Diesel (Budd) car	–	one Conductor
(b)	two or less working coaches(vestibule between coaches; maximum five cars overall; and checked baggage handled en route)	– –	one Conductor one combination Assistant Conductor / Baggage Handler
(c)	four or less working coaches	– –	one Conductor one Assistant Conductor
(d)	three or four working coaches one (or more) working baggage car	– – –	one Conductor one Baggage handler one Assistant Conductor
(e)	five (or more) working coaches	– – –	one Conductor one Assistant Passenger Conductor one Assistant Conductor
(f)	five (or more) working coaches; one (or more) working baggage car	– – – –	one Conductor one Baggage handler one Assistant Passenger Conductor one Assistant Conductor

NOTE: In the application of this paragraph:

(a) a working coach is defined as an in-service passenger car which comes under the responsibility of the conductor for the collection of transportation, limited to the following passenger cars or to other passenger equipment which is designated or placed in service on a tour of duty basis, to perform the function of:

(i) day coaches;
(ii) day-nighters;
(iii) café-coach lounge cars; and/or
(iv) snack coaches;

The issue of crew consists in passenger service is further dealt with in Addendum No. 63, referred to in article 11.1, as well as Addendum No. 64 and Addendum No. 64A to the collective agreement.

Addendum No. 63, an agreement dated August 27, 1982, arises from the implementation of reduced crews in passenger service, effective October 31, 1982. It provides for protected status for certain trainmen, and reads, in part, as follows:

August 27, 1982

In the application of certain provisions of Crews – Passenger Train Service effective October 31, 1982:

1. Protected passenger Trainmen are employees who:

(a) held a regular position in passenger service at any time between October 1, 1981 and August 27, 1982; or

(b) who completed 52 tours of duty in the 52-week period immediately preceding August 27, 1982.

2. "Protected passenger Trainmen" will:

(a) be governed by the terms, conditions and benefits of the VIA Special Agreement of July 7, 1978, while such Special Agreement is in effect and will be

shown on the list of "protected passenger Trainmen" in Item 7 of this Appendix; and

(b) shall have the right and obligation to perform passenger service, for which they are qualified, as provided by Item 3 hereof, to the extent that positions are available to them at their home terminal.

3. If otherwise unable to hold work in passenger service at their home terminal, "protected passenger Trainmen" will be permitted to fill out the passenger crew consist in accordance with the following crewing levels:

Consist of Crews – Passenger Train Service

(a) Passenger trains not handling a local baggage car will have a Conductor and two Brakemen; passenger trains handling a local baggage car will have a Conductor, Train Baggageman and one Brakeman, and if eight or more cars are handled will also have a Flagman; one or two box baggage or refrigerator cars to count as one car and three or four as two cars. Steam Generator Unit in service and coupled to the locomotive will not be included in the count of cars.

(b) Manning of oil, electric and other motor coaches:

(ii) when no trailer is operated crew will consist of a Conductor (and Motorman) except where the volume of baggage and express to be handled warrants the addition of a Baggageman; and

(ii) when a trailer is operated, crew will consist of a Conductor (and Motorman) and either a Baggageman or a Brakeman, and when conditions warrant, both a Baggageman and a Brakeman.

NOTE: It is understood that in cases where conditions warrant, the above may be varied from by joint agreement, and reciprocal relief will be afforded in the manning of the various runs. The general conditions of the run, such as the number of times the train is required to take siding, the volume of baggage, mail and express handled and the amount of other work, to be taken into consideration when deciding as to the consist of the crew. In case of a difference of opinion as to the necessity for a Brakeman or Baggagemen or both, the matter will be referred for adjustment to the proper officer of the Company and the General Committee.

...

6. The following provisions will apply if further reductions in passenger crew consists are required, except if such reductions are made pursuant to the VIA Special Agreement of July 7, 1978:

(a) The Company shall notify the General Chairman and the Local Chairman of the Union in writing of its desire to meet with respect to reaching agreement on a reduction in the crew consist provided by Article 7 for crews governed thereby.

(b) Reductions in the consist of a crew or crews, as the case may be, shall be subject to the two conditions set forth hereunder:

(i) that adequate safety can be maintained with the proposed crew consist reduction; and

(ii) that such reduction will not result in undue burden being placed on the reduced crews.

(c) The time and place for the Company and Union representatives to meet shall be agreed upon within 15-calendar days from the date of the notice referred to in paragraph 6(a) and the Parties shall meet within 21-calendar days of the date of such notice. The time limits specified in this paragraph may be extended by mutual agreement between the Parties.

(d) The meeting shall be limited to a determination of whether or not the two conditions set forth in paragraph 6(b) can be met with the proposed crew consist reduction. If the Parties do not reach agreement or if the meeting referred to herein does not take place, the Company may, by so advising the General Chairman and the Local Chairman in writing, commence a survey period of one-calendar week for the operations concerned, during which Union representatives may observe such operations. The survey period shall commence not less than ten and not more than 20-calendar days from the date of the Company's advice with respect to the survey period.

(e) If, after completion of the survey period, the Union fails to agree that the two conditions set forth in paragraph 6(b) can be met with the proposed crew consist reduction, they will, within 60-calendar days of the completion of the survey period, give the Company specific reasons in writing why, in their opinion, such conditions cannot be met. The Company may, by so advising the General Chairman in writing, refer the dispute or any part thereof to arbitration.

Addendum No. 64, agreed to April 20, 1983, brought further clarity to the rights and obligations of protected passenger trainpersons, particularly with regard to the obligation to fill non-reducible passenger positions prior to electing to fill reducible positions. Finally, Addendum No. 64A, dated October 17, 1983, issued in the form of a question and answer presentation to assist employees and managers in the application of the Passenger Crew Consist Agreement of August 27, 1982. Among the questions and answers is the following:

4. Q. Do the manning provisions of the Agreement apply to "GO" Transit service?

A. No.

The Company submits that there are no provisions within the collective agreement which define the crew consists to be applied in GO service. With respect to the application of article 11 of the collective agreement, the Company argues that, as neither the conductor nor the brakeperson in GO service are involved in the collection of fares from passengers on GO trains, the coaches in GO service cannot be described as a "working coach" within the meaning of article 11 of the collective agreement. The Company further points to the classifications of equipment described under article 11, submitting that they do not coincide with the type of commuter coach utilized in GO Transit service, but rather describe conventional passenger equipment utilized in inter-city service on VIA trains.

The Company further submits that Addendum 63 was intended to deal with what it describes as "conventional passenger trains", and does not apply to the reducibility of crews in GO train service. In this regard it points specifically to question and answer no. 4 found in Addendum No. 64A of the collective agreement. The Company submits that that article very simply excludes GO service from all of the provisions of article 11 and Addendum 63 of the collective agreement in respect of the manning of trains in GO Transit service. The Company concedes that prior to the memorandum of agreement of August 27, 1982 the collective agreement did contain provisions governing crew consists in GO service.

It submits that articles 7 and 8 of the collective agreement which it submits were in effect, for example, in 1972 when a dispute arose with respect to the merits of reducing GO service crews, specifically provided for the crewing of trains in GO service, insofar as they governed the crew consists on all passenger trains. It argues that the deletion of articles 7 and 8 in the 1982 agreement, and the introduction of the language now found in article 11, effectively eliminated GO service from the coverage of the collective agreement for the purposes of crew consists. In its view factors such as the newly inserted definitions of "working coach" removed the application of article 11 and Addendum 63 to GO service, a matter which it maintains was further clarified by question and answer 4 found in Addendum 64A to the collective agreement.

The Arbitrator's review of the record, including prior awards such as **CROA 344** concerning the reduction of crews in GO service, and prior collective agreements filed in this Office, suggests that the chronology related by the Company is not entirely accurate. At the time of **CROA 344**, the consist of crews in passenger train service and the process for reducing crews were governed by what were then articles 73 and 73A of the collective agreement, respectively. Prior to the 1982 agreement the substance of those provisions came to be incorporated into articles 7 and 8 of the collective agreement, as is evidenced by an examination of the 1979 collective agreement. There was, however, no difference in substance, although it appears that prior to 1982 the collective agreement never contained any separate reference to crew consists in GO train service, it being understood, presumably, that it fell into the general provisions relating to passenger service.

In the Company's view, given the evolution of the collective agreement, it is now under no obligation to renegotiate a change in crew consist in GO service, save as might arise within the material change provisions of article 79 of the collective agreement. On that basis it maintains that it has complied with the requirements of the collective agreement as they would pertain to the reduction of crews in GO service, and that there has been no violation of the provisions of the agreement in this regard.

In an alternative submission, the Company argues that if it should be found that the collective agreement does contain provisions governing crew consists in GO service, then the terms of article 79 provide a mechanism for relaxing those provisions to permit crew reductions. In this regard it points to the following sentence contained in paragraph 79.1(a):

> Relaxation in Agreement provisions considered necessary for the implementation of a material change is also subject to negotiation;

The Company further notes the jurisdiction of the Arbitrator under article 79.1(f) of the collective agreement which extends to the relaxation of agreement provisions "considered necessary for the implementation of the material change,".

The most fundamental position asserted by the Company, however, remains its argument that article 79 of the collective agreement, concerning the introduction of material change, remains available to it, notwithstanding that a change is general and would result in the reduction of crews. In this regard it refers the Arbitrator to the prior decision of this Office in **CROA 221**. In that case, it was found that the introduction of ground to cab radios in yard service would result in the reduction of certain crews, although there was no contemplated reduction in yard assignments. In that circumstance the Arbitrator found that the change in question did fall within the material change provisions of the collective agreement there under consideration, between the Canadian Pacific Railway Company (Pacific Region) and the United Transportation Union. By analogy, the Company submits that the introduction of alarm strips in the GO train coaches for passenger security is a similar change, which will result in the reduction of crew consists, and which may be dealt with under the terms of the material change provisions of the collective agreement, as was found in **CROA 221**.

The Union submits that the provisions of article 79 of the collective agreement governing material change were never intended to deal with so radical a change as the elimination of an entire classification of employees in a particular form of service. It points to the genesis of the material change provisions, in the report of Mr. Justice Samuel Freedman, following a strike by employees who were dislocated as the result of the implementation of run-throughs at Nakina and Wainwright. The Union notes that the material change provisions were first incorporated into the collective agreement in late 1969, and have continued with little substantial change, to the present time.

The Union cites the history of the application of the material change provision of the collective agreement in support of its view that it was intended, and has at all times has applied, to changes in operations, generally on a local or regional basis, the implementation of which was not prevented by any other provision of the collective agreement. By way of example, it cites of number of CROA decisions concerning the application of the material change provisions including **CROA 1408, 1444, 1591, 1675, 1684, 1738, 1765, 2024, 2067, 2070, 2138, 2139, 2166** and **2159**. Without being exhaustive, the cases cited include such changes as the relocation of yard limits, the introduction of a flying crew, a change in home terminals, changes in assignments and, in one case, an extension of run in GO service. In essence, the Union submits that the material change provisions of the collective agreement were intended to address changes in operations implemented at the discretion of the Company which adversely impact employees. It argues that a wholesale change in crew consist, a matter which, for example, in freight service has been the subject of complex special agreements, is not a matter properly dealt with within the framework of the material change provisions of the collective agreement.

Counsel for the Union notes that GO Transit service has involved the assignment of at least one conductor and one brakeperson since the inception of the service. In support of his view that the collective agreement does contemplate regulation of crew consists in GO service, Counsel for the Union refers the Arbitrator to article 11, as well as to Addendum 50, Addendum 63, Addendum 64 and Addendum 64A of the collective agreement.

Addendum 50 of the collective agreement, dated December 19, 1980, deals directly with the assignment of employees in GO service and contains a number of provisions in respect of work schedules, split tour assignments and overtime rules. It also provides for certain arbitrary allowances, bulletining arrangements and training for brakepersons. Article 17 of Addendum No. 50 provides as follows:

> **17** All previous Understandings, Memoranda of Agreement, etc., with respect to the manning and operation of GO commuter trains, which are in conflict with the provisions of this Memorandum of Agreement, are cancelled.

Counsel for the Union stresses the unprecedented nature of the Company's action. He notes that while a number of Company initiatives, such as the introduction of run-throughs and terminal closures have been dealt with by the parties through the material change provisions of the collective agreement, there has never been a general crew consist reduction negotiated or implemented by way of the material change procedure. By way of contrary example, he points to the provisions of article 11.5 of the collective agreement which were the result of a negotiated reduced freight crew agreement fashioned by the parties. Similarly, Counsel points to Addendum No. 63 itself as an example of the parties' ability to negotiate reduced crew consists in passenger service.

The Union submits that the position taken by the Company in the last round of bargaining is further support for the Union's argument. During the course of bargaining in 1991 the Company tabled a proposal in respect of reduced crew consists which included a proposal to amend the collective agreement to provide for the following crew consist in passenger service:

(b) One conductor only in any passenger service operated by the Company.

The Union submits that the Company's tabling of that proposal constitutes a tacit recognition of its inability to unilaterally implement such a change under the aegis of the material change provisions of the collective agreement. It is common ground that the proposal advanced by the Company was not agreed to the by the Union and was eventually withdrawn.

Counsel for the Union advances a different interpretation of the provisions of article 79.1(a) of the collective agreement relating to the relaxation of collective agreement provisions. He submits that that part of the article is intended to permit the parties to avoid the impact of collective agreement provisions which would otherwise stand in the way of minimizing the adverse effects of a material change. It is not, he argues, a provision which opens the door to the avoidance of rights and obligations otherwise vested in the Union or the employees under the terms of the collective agreement. In effect, to put it simply, Counsel would argue that the Company could not, for example, purport to reorganize its wage structure and introduce lower wage rates under the material change provisions of the collective agreement, by purporting to seek a "relaxation" of collective agreement provisions.

The Union relies on the terms of article 11 and Addenda 60, 63 and 64A as establishing the makeup of crew consists in passenger service, including GO train service. Counsel stresses that paragraph 6 of Addendum 63 contains a precise mechanism for the reduction of crewing levels in passenger service. He notes that that process was followed in a prior crew reduction implemented by the Company in GO train service. In **CROA 344**, under what was then the terms of article 73-A of the collective agreement, which are identical to the provisions of paragraph 6 of Addendum 63, the Company sought to reduce crews in GO Transit trains to one conductor and one brakeperson. It was there determined that the proposed crew reduction could be implemented with due regard to adequate safety, and the Company's request was allowed.

As an alternative submission, the Union argues that the procedure followed in **CROA 344**, presently available under paragraph 6 of Addendum 63, is one which should be followed by the Company, should the Arbitrator reject the first submission of the Union with respect to the appropriateness of negotiating a crew consist reduction only at the national bargaining table. In advancing that position it is clear that the Union does not accept the Company's characterization of "passenger service" within the terms of Addendum No. 63 as meaning "conventional passenger service", and excluding commuter passenger service. In this regard, its Counsel points to the following definition of passenger service found in Addendum No. 64A, the purpose of which is to clarify the application of Addendum No. 63 dealing with the implementation of reduced crews. The first question and answer in Addendum No. 64A defines passenger service as follows:

A. (i) passenger service is the operation of passenger trains on behalf of CN, Amtrack, VIA Rail Canada, including Commuter Services;

Counsel for the Union submits that there can be no doubt, in light of the foregoing definition, that Addendum No. 63 was intended to apply, insofar as the process for reduced crew implementation is concerned, to commuter services, including GO train service.

It is against that context that the Union explains the meaning of question and answer no. 4 in Addendum No. 64A. Counsel submits that while that question and answer would indicate that the "manning provisions" of Addendum No. 63 do not apply to GO transit, it is limited to that qualification, and does not purport to strike the application of other provisions in Addendum No. 63. In this regard Counsel makes a distinction between the manning provisions and the provisions relating to the reductions in crew consists. Specifically, as elaborated by one of the Union's general chairpersons, the purpose of the clarification in question and answer no. 4 is to make it clear that a protected passenger trainperson does not have the ability to occupy a reduced brakeperson position on a GO train. It is in that sense, the

Union submits, that the reference to the manning provisions of Addendum No. 63 is to be understood. By way of further support, Counsel points to the content of question and answer no. 3 which states that the manning provisions of the agreement do not apply to mixed and combination assignments. The Union submits that the purpose of the questions and answers found in Addendum No. 64A is to reflect the understanding of the parties that the basic crew consist of one conductor and one brakeperson is to be maintained in GO train service, notwithstanding what would otherwise be the rights of protected passenger trainpersons.

Further, in support of the substance of its argument, Counsel for the Union points to the content of the second question and answer found in Addendum No. 64A. Noting the language of the first question and answer, which confirms that commuter service is included within passenger service for the purposes of Addendum No. 63, Counsel draws to the Arbitrator's' attention the following part of the answer to question no. 2:

> **(b)** the Agreement of August 27, 1982 provides:
>
> – a basic crew consist of one conductor/one brakeman (except for single RDC's);

I turn to consider the merits of the positions advanced by the parties. In the Arbitrator's view there is substantial difficulty attempting to follow the logic of the Company's argument, when regard is had to the language of the collective agreement, and of the addenda referred to above. If the Company's argument is accepted, parties sophisticated in the ways of collective bargaining, for whom the issue of crew consists has been one of major concern for many years, effectively agreed, by omission, to make no provision in their collective agreement for crew consists in GO service after the introduction of Addendum No. 63 in August of 1982. The Company does not dispute that prior general definitions of passenger service, as for example under article 7 of the 1979 collective agreement, would have included GO train service, and the crew consist provisions, such as existed prior to 1982, would have applied to GO train service. It submits that the introduction of article 11 and Addendum No. 63 effectively excluded GO service from the collective agreement, at least for the purposes of the regulation of crew consists.

It is, of course, open to the parties to the collective agreement to make so radical a departure in the delineation of right and obligations running between them, in something so critical to the Union's interests as well as the Company's as the issue of crew consists. They should not, however, be lightly taken to have done so, absent clear and unequivocal language to support the conclusion that they so intended.

The language in the collective agreement before the Arbitrator is far from supportive of such a conclusion. Bearing in mind that Addendum No. 64A is the product of the parties' agreement, it is significant in my view that the first question and answer within that document defines passenger service, for the purposes of Addendum No. 63, as including commuter services which I take to include GO service, the largest volume of commuter service operated by the Company. Does that provision stand in conflict with question and answer no. 4? I think not. It is trite to say that the provisions of a collective agreement should not be construed as contradictory, where reasonable interpretation can apply them in a manner that is complementary and consistent. It is difficult to understand what purposive basis would underlie excluding employees in GO train service from the general protections of Addendum No. 63. In the Arbitrator's view the more rational conclusion is that the parties did intend, by question and answer no. 4 of Addendum No. 64A, to make it clear that protected passenger trainpersons could not exercise their protected rights to claim reduced positions in GO train service, and nothing more. That issue is entirely separate from the issue of the further reduction of crew consists in commuter service, a matter which is plainly within the ambit of paragraph 6 of Addendum No. 63.

It is significant, I think, that at least from the time of **CROA 344**, the collective agreement has retained the same language in respect of the procedure to be followed for further reducing crew consists in passenger service. What was originally article 73A of the collective agreement of 1972 became incorporated into article 8 under the 1979 collective agreement and eventually emerged as paragraph 6 of Addendum 63, with no substantial change in language. It is also worthy of note that paragraph 6 of Addendum No. 63 speaks of a reduction in crew consist "provided by article 7", an apparent reference to the crewing provisions reflected in the 1979 collective agreement, and which the Company concedes applied to GO train service. While it is arguable that the reference to article 7 is an oversight, and that "article 11" should be substituted, it is equally plausible that the parties were content, in 1982, to refer to the previous article 7 because they did not believe they were making any change in substance with respect to the application of the crew consist provisions to any class of service, including commuter service, such as GO transit.

Given the evolution of the collective agreement, I do not find the analysis of article 11 to be helpful to the issue at hand. Whatever may have been intended by the terms of article 11 of the collective agreement, it is clear by the terms of Addendum No. 63, read in light of Addendum No. 64A, that the parties intended commuter service to be covered by the agreement of August 27, 1982, and that, subject to the proper application of the procedure for reducing crews, a basic crew consist is to include one conductor and one brakeperson.

Because I am satisfied that Addendum No. 63 is intended to apply to commuter service, including GO train service, insofar as the mechanism for the reduction of crew consists is concerned, I find it unnecessary to resolve the argument between the parties with respect to the meaning of that part of article 79.1 relating to the relaxation of collective agreement provisions. Suffice it to say, for the purposes of this award, that the collective agreement is specific as to the procedure to be followed should the Company wish to implement a crew consist reduction in passenger service. The specific procedure to be followed is expressly established within the terms of paragraph 6 of Addendum No. 63 of the collective agreement. In the case at hand it is that procedure which the Company is under a contractual obligation to follow.

As is obvious from the foregoing conclusions, the Arbitrator cannot accept the first argument of the Union, to the effect that the Company is without the ability to seek to implement a reduction in crew consists, save through negotiaitons at the national bargaining table. If that position were correct, the language of paragraph 6 of Addendum No. 63 would be entirely superfluous. In the Arbitrator's view the parties have plainly addressed the question of how to implement a crew consist reduction in passenger service, including GO service, as reflected in the terms of Addendum No. 63.

For the foregoing reasons the position advanced by the Company cannot be sustained by the Arbitrator. It is not open to the Company to by-pass the crew consist reduction provisions of Addendum No. 63, provisions which, for the reasons related above, I find have application to GO train service. For these reasons the proposition of the Company must be rejected, and the position of the Union, insofar as it supports the application of paragraph 6 Addendum No. 63, must be sustained.

April 12, 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR