

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2575

Heard in Montreal, Thursday, 12 January 1995

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim on behalf of Yard Spare Board employee M. Wilkinson, Toronto, concerning the reduction in his maintenance of earnings effective May 7, 1993.

JOINT STATEMENT OF ISSUE:

On May 7, 1993, Mr. Wilkinson was the first employee out on the Yardmen's spare list, and he was called to work as Assistant Conductor on Trains 87-80 to Sarnia. The road spare list had been exhausted and there were no employees available from the emergency list.

When he was called Mr. Wilkinson stated that he was not properly dressed to work in passenger service, and he did not work the assignment. Since he did not accept the call, his incumbency was reduced as per article E.1(b) of the special agreement.

It is the Union's contention that Mr. Wilkinson's incumbency should not have been reduced, since, in accordance with article 40.12 of agreement no. 12, yard service employees cannot be compelled to work in road service, unless those employees in road service have been polled, and if none are available, the employee being held is the junior conductor in yard service. The Union requests that Mr. Wilkinson be compensated for all monies lost.

It is the Corporation's position that Mr. Wilkinson was properly called in accordance with article 40.7 of agreement no. 12, and it has declined the Union's request.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRPERSON

FOR THE CORPORATION:

(SGD.) K. W. TAYLOR
FOR: DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

- | | |
|---------------|---|
| D. A. Watson | – Senior Labour Relations Officer, Montreal |
| Wm. Radcliffe | – Transportation Officer, Customer Services, Corridor West, Toronto |
| F. Hebert | – Manager, Crew Management Centre |

And on behalf of the Union:

- | | |
|-----------------|----------------------------------|
| W. G. Scarrow | – General Chairperson, Sarnia |
| M. P. Gregotski | – General Chairperson, Fort Erie |

AWARD OF THE ARBITRATOR

The fundamental issue raised in the case at hand is whether Mr. Wilkinson was available for the assignment as assistant conductor on trains 87-80 on May 7, 1993. A secondary issue is whether, as the Union asserts, Mr. Wilkinson could not be called from the craft of yard service to work in road service, other than on a voluntary basis.

In the Arbitrator's view, in light of the facts presented, it is unnecessary to resolve the secondary issue raised in the Union's argument. It appears to be common ground that, in any event, the Corporation does not generally penalize an employee in respect of his or her incumbency by considering them unavailable in the event that they do not have the appropriate uniform when called for road service. As indicated by the Corporation's representative at the hearing, employees who, for valid reasons, do not have a uniform are instructed to nevertheless present themselves for work in appropriate "tie and jacket" attire. The evidence before the Arbitrator, however, discloses that that option was not afforded the grievor, and that he was nevertheless willing to carry out the assignment. A letter provided to the Arbitrator written by the grievor, which stands unrebutted, contains in part the following:

I was called to work no. 87 off the yardmen's spareboard. I informed the crew clerk that I did not have proper uniform or proper footwear and that it was not reasonable for me to work this job. After this I told her I was not refusing the call and would work the job under protest. The crew clerk put me under twelve hour penalty and had the incumbency office deduct me.

In the circumstances, the Arbitrator cannot find that the grievor was unavailable for the assignment in question or that he refused to perform it in a way which would, in any event, have justified the reduction of his incumbency. For these reasons the grievance must be allowed. The Corporation is directed to compensate Mr. Wilkinson forthwith in the amount of \$308.63.

13 January 1995

(signed) MICHEL G. PICHER
ARBITRATOR