

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3480**

Heard in Montreal, Tuesday, 12 April 2005

concerning

**VIA RAIL CANADA INC.**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)**

**EX PARTE**

**DISPUTE:**

Montreal based crews running through Toronto to Oakville.

**UNION'S STATEMENT OF ISSUE:**

The Corporation contends that there is no violation of the collective agreement or past practice and that there is no alteration of assignments by the Corporation, by extending the service to Oakville.

The Union's position is that the Corporation is merely positioning themselves for further "service extensions". Also, that if this issue is not addressed now the Corporation will interpret our silence as complacency.

In fact this grievance started with the issue of running through to Oakville, then Aldershot was decided and the Corporation has also hinted at Peterborough being included in the future.

The resolve to this grievance is to have all Montreal based employees have Toronto Union Station as their final destination (release point). Also as of January 16, 2000, for each Montreal based employee that worked from Toronto-Oakville and Oakville-Toronto, thirty (30) minutes of wages be paid for a Toronto employee (to be divided among all Toronto based employees).

**FOR THE UNION:**

**(SGD.) D. OLSHEWSKI**  
**NATIONAL REPRESENTATIVE**

There appeared on behalf of the Corporation:

- E. Houlihan – Sr. Manager, Labour Relations, Montreal
- L. Laplante – Sr. Officer, Labour Relations, Montreal
- B. Casey – Manager, On-Train Services, Toronto
- D. Stroka – Officer, Labour Relations, Montreal

And on behalf of the Union:

- T. Blanchard – Regional Bargaining Representative, Toronto

### **AWARD OF THE ARBITRATOR**

The facts pertinent to this grievance are not in dispute. Commencing in January of 2000 the Corporation extended the run which previously had been between Montreal and Toronto to include Oakville. Indeed, it appears that since that time it has further extended the run in question to Aldershot. Both prior to and since the change the work between Montreal and Toronto, including service to Ottawa, has been shared between Montreal based crews and Toronto based crews, in a proportion of 55% and 45%, respectively. That proportion has not changed over time. What has changed, and is the basis of the grievance, is that Quebec based crews have been called upon to operate past Toronto Union Station to Oakville and Aldershot, in territory which was previously handled by Ontario based crews.

Article 10 of the collective agreement provides for four seniority groupings, being VIA Atlantic, VIA Quebec, VIA Ontario and VIA West. It is not disputed that the four respective seniority lists are the basis for the bidding of assignments within the four geographic areas. However, by the very nature of the service, employees in the

different seniority groupings do find themselves working into and across adjoining territories.

The Union has directed the Arbitrator to no provision of the collective agreement which would give exclusive territorial jurisdiction to any seniority grouping. Its representative submits, however, that the overall scheme of the collective agreement and past practice support its position. In that regard, he makes reference to the establishing of regional spareboards, article 12 of the collective agreement which governs the bidding of assignments and the process by which Operation of Runs Statements (ORS) are prepared, including consultation with local chairs of the Union. Reference is also made to the organizational charts for trains which are generally designated by traditional destination points. The Union's representative stresses that the inclusion of the regional seniority groupings within article 10 of the collective agreement must be given some significance. In that regard he submits that it would not, for example, be open to the Corporation to assign trips which originate and operate entirely at or west of Toronto, as for example assignments in the Niagara Peninsula which have always been given only to Ontario based employees, to employees from the Quebec seniority grouping.

The Arbitrator can appreciate the perspective which underlies this grievance. It is arguable that there is a limit to which the Corporation can disregard the seniority groupings in making assignments, particularly assignments which have no cross-

boundary component. It is unnecessary to deal with that circumstance, however, as it is not before me in the case at hand.

What this case involves is an adjustment in what has been a long-standing cross-boundary assignment, namely passenger rail service between Montreal and Toronto, including Ottawa. Those assignments have been shared, virtually since the inception of the Corporation, by both Montreal and Toronto based employees, in accordance with an agreed ratio. That has not changed with the adjustments, first to Oakville in 2000, and then to Aldershot in 2001. The present grievance does not disclose the wholesale reassignment of work entirely within a geographical boundary corresponding to a seniority grouping, from employees in one seniority grouping into the hands of employees from another seniority grouping. Indeed, the Arbitrator makes no comment on the assertion of the Corporation that it is free to assign employees anywhere in Canada, regardless of their seniority grouping of origin. While it is difficult to see how it could do so without entirely undermining the significance of article 10 of the collective agreement governing seniority, that is clearly not the matter at issue in this grievance.

As noted above, what this grievance concerns is the adjustment in a cross-boundary assignment which has been long established as properly being shared by both Montreal and Toronto based crews from two separate seniority groupings. If anything, the provisions of the collective agreement and past practice would assist the Corporation's position, indicating that such assignments are indeed appropriate. In the Arbitrator's view it is of little moment whether the Corporation chooses to terminate the

Montreal-Toronto service at Oshawa, Toronto Union Station or Oakville. In essence, the assignments remains the same, being passenger service which crosses the seniority grouping boundaries and can be properly serviced by employees from both seniority groupings, in keeping with established agreements as to the appropriate ratio. In these circumstances, particularly given the absence of any language in the collective agreement which would give exclusive territorial jurisdiction to any particular seniority grouping in cross-boundary service, no violation of the collective agreement is disclosed.

For all of the foregoing reasons the grievance must be dismissed.

April 18, 2005

**(signed) MICHEL G. PICHER**  
ARBITRATOR