

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

**CASE NO. 3853**

Heard in Montreal, Thursday, 14 January 2010

Concerning

**VIA RAIL CANADA INC.**

and

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

**EX PARTE**

**DISPUTE:**

The application of articles 7 and 8 of the Supplemental Agreement of Collective Agreement No. 2, subsequent to the abolishment of the Assistant Service Coordinator (ASC) position on Trains no. 14 and 15 effective February 1, 2009.

**JOINT STATEMENT OF ISSUE:**

It is the Union's position that the Corporation is in violation of articles 7.6(b) & (c) by denying Maintenance of Earnings (MOE) protection while Ms. Abby Salah is on the spareboard, following the exercise of her seniority at her home terminal of Halifax. "An employee may instead elect to operate from the Spare Board at his home terminal with Maintenance of Earnings."

The Union requests that Ms. Salah be made whole, with compensation of MOE of 40 hours per week and benefits, effective from February 4, 2009, while on the spareboard, as per articles 7.6(c), 7.6(c) and 8.9 of the Supplemental Agreement.

The Corporation submits that Ms. Salah was hired on May 25, 1998. As such she does not qualify as an "eligible" employee under the terms of articles 7 and 8 of the Supplemental Agreement.

In accordance with articles 7 and 8 of the Supplemental Agreement, MOE benefits are intended for “eligible” employees hired prior to May 15, 1994.

**FOR THE UNION:**

**(SGD.) R. FITZGERALD**  
NATIONAL REPRESENTATIVE

**FOR THE CORPORATION:**

**(SGD.) D. STROKA**  
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Stroka	– Sr. Advisor, Labour Relations, Montreal
S. Duffy	– Manager, Customer Experience, Halifax
N. Desrochers	– Specialist, Payroll Service, Montreal
J. Pastor	– Advisor, Labour Relations, Montreal

And on behalf of the Union:

R. Fitzgerald	– National Representative, Toronto
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**AWARD OF THE ARBITRATOR**

The grievance is dismissed for reasons expressed in **CROA&DR 3852**.

January 18, 2010

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