

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

CASE NO. 3862

Heard in Montreal, Wednesday, 10 February 2010

Concerning

VIA RAIL CANADA INC.

and

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

EX PARTE

DISPUTE:

The establishment of split-trick assignments at the St. Catharines Train Station.

CORPORATION'S STATEMENT OF ISSUE:

The Corporation requires split trick assignments at St. Catharines due to the intermittent nature of the work based on current business requirements.

The Corporation is requesting a decision to implement the assignments on the matter as per article 4.3 of the collective agreement.

FOR THE CORPORATION:

(SGD.) B. A. BLAIR

SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

B. A. Blair	– Sr. Advisor, Labour Relations, Montreal
R. Doherty	– Manager, Customer Experience, Montreal
G. Sarazin	– Sr. Advisor, Labour Relations, Montreal

And on behalf of the Union:

R. Fitzgerald	– National Representative, Toronto
D. St-Louis	– National Representative, Montreal
H. Grant	– National Secretary/Treasurer, Toronto
D. Andru	– Regional Representative, Toronto
S. Auger	– Regional Representative, Montreal

AWARD OF THE ARBITRATOR

The instant grievance relates to the application of article 4.3 of the collective agreement which reads as follows:

- 4.3** Where the work is of an intermittent character, there being no work for periods of more than one hour's duration for one or more employees, and their services cannot otherwise be utilized, split trick assignments may be established. Such split trick assignments will be confined to not more than two tours of duty within a spread of twelve consecutive hours. Split trick assignments will not be established until agreed to by the designated National or Regional Representative of the Union or, in the case of a dispute, until a decision has been rendered authorizing establishment. The spread of hours may be extended by mutual agreement to take care of exception conditions.

The Union raises a preliminary objection. It submits that the Corporation did not give it sufficient information and the opportunity to discuss the proposed split trick assignment for the St. Catharines Station. On that basis its representative argues that the matter is not ripe for arbitration and should not be considered by the Office at the *ex parte* request of the Corporation.

The Arbitrator has some difficulty with that preliminary objection. Firstly, there is nothing within the language of article 4.3 of the collective agreement which contemplates a process of discussion and negotiation comparable to the provisions of collective agreements within the railway industry which deal with issues of material change or of technological, operational or organizational change. All that article 4.3 of the collective agreement provides is that the split trick is not to be instituted until such time as there is agreement by the Union or, failing agreement, a arbitral decision authorizing the establishment of the split trick. The Union obviously has a right to first be

informed of the proposal and to give its assent or disagreement before the matter can be arbitrated.

The facts, not challenged by the Union, indicate that the Corporation noted a relatively low volume of ticket sales at St. Catharines where, until the proposed change, there was one Sr. Customer Service Agent on duty Monday to Friday for 06:30 to 14:30, one Customer Service Agent on duty from Wednesday to Sunday from 12:30 to 20:30 and a further part time assignment for a Sr. Customer Service Agent Monday and Tuesday from 12:30 to 20:30 and Saturday and Sunday from 09:00 to 13:30.

The Corporation convened a meeting with the Regional Representative of the Union on March 10, 2009 to explain the proposed establishment of a split trick assignment at the St. Catharines Station in accordance with article 4.3 of the collective agreement. The Corporation then provided a business plan and supporting data to the Union's representative, copies of which are filed before the Arbitrator. The proposed scheduling was to have a Sr. CSA on duty Monday to Friday from 06:30 to 10:30 and from 14:30 to 18:30 with a Sr. CSA or CSA on duty Saturday and Sunday from 09:30 to 15:30 and 16:30 to 20:30. In the Corporation's view that scheduling would respond to the peaks hours at which ticket sales occurred while relieving against the continuation of unacceptably unproductive hours in the ticket selling function.

It appears that summer operations in GO Transit to the Niagara area, which involve some ticket sales at St. Catharines, resulted in a delay of the implementation of

the split trick proposal. However, with the end of the tourist season, in October of 2009 the Corporation again met with the Union's representative to review the data and advised that it wished to proceed with the split trick proposal. The Union did not agree. As a result the Corporation filed an *ex parte* statement of issue with this Office to have the matter resolved at arbitration. It appears that the parties agreed to adjourning the matter and that further discussions did occur, during which the Union made a written proposal, including conditions for the implementation of split trick assignments. Those conditions were not acceptable to the Corporation, as it viewed them beyond the requirements of the collective agreement. I must conclude that the Corporation's obligation of communication with the Union was more than satisfied.

The issue before the Arbitrator is whether the conditions of article 4.3 have been met. Can it be said that the work is of an intermittent character, with no work being required for periods of more than an hour's duration for one or more employees in circumstances such that the services of the employees cannot be productively utilized? I am satisfied that that case is amply made out. The data gathered by the Corporation, and placed in evidence before the Arbitrator, confirms that during weekdays at St. Catharines virtually every day there were periods of at least one hour more with no ticket sales. Indeed some days had three hours of down time in that regard and, on occasion, up to four hours. The data also reveal that weekends sometimes involve period of three to four hours where there are no ticket sales. The pattern reflected in the evidence is clear. Throughout 2009 on average, Monday to Friday, thirty-eight tickets per day were sold with peak sales corresponding with train time in the morning and

evening. The same pattern is reflected on weekends. A consistent recurring pattern is of substantial periods, generally at midday, with no ticket sales.

On the whole, I am satisfied that the Corporation has discharged its onus of establishing its need to go to a split trick schedule at the St. Catharines Station. Its request in that regard is therefore granted.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR