CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4137

Heard in Montreal, Wednesday, 13 September 2012

Concerning

VIA RAIL CANADA INC.

And

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

EX PARTE

DISPUTE:

In January 2012 the Corporation wanted a full bid for the operation of Runs Schedule change for all runs in the Toronto-Montreal Corridor. This can only be done outside of May with the Union's consent. The Union only consented in January due to the fact that the Corporation agreed to certain conditions. These conditions were not met so the Union demanded the Corporation follow article 12.10 of the collective agreement for the January 2012 bids. The Corporation refused to follow article 12.10 and proceeded with a Full Bid.

UNION'S STATEMENT OF ISSUE:

The Union maintains that since the Corporation did not honour all conditions set forth to forego article 12.10 of the collective agreement, that the Corporation was therefore obliged to only post bids for those jobs that fell under article 12.10.

The Union seeks a declaration that the Corporation was in violation of article 12.10 of collective agreement #2. The Union also seeks two article 8 notices for the two jobs abolished and maintenance of earnings for the two employees that were forced to the spareboard. Moreover, compensate at punitive rates all employees for each extra day worked over and above their previous assignment.

CORPORATION'S STATEMENT OF ISSUE:

The Corporation planned to change certain train operations in the Montreal – Ottawa – Toronto corridor, effective January 24, 2012. Rather than carrying out the displacement process, as per article 12.10, the Corporation wished to hold a General Bid, as per article 12.1.

In discussion with the Union, it was agreed that Toronto would have a general bid: **(1)** If wages were protected between the old bid and the new bid. **(2)** If the Union was involved in the bid process. **(3)** Any job abolishment would result in an article 8 notice under the Employment Security and Income Maintenance Agreement.

The Union submits that the Corporation failed to comply with the understanding, particularly with respect to the Union's involvement and the transfer of two Senior Service Attendant positions to Montreal.

The Corporation maintains that it met all terms of the local understanding. The Union was involved throughout the process. No positions were abolished in Toronto but two positions were transferred to the Montreal terminal. The employees could follow the work pursuant to Article 14 of the collective agreement #2.

FOR THE UNION:	**FOR THE CORPORATION:**
(SGD.) R. FITZGERALD	**(SGD.) J. MAILHOT**
NATIONAL REPRESENTATIVE	**ADVISOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

J. Mailhot	– Advisor, Labour Relations, Montreal
B. A. Blair	– Sr. Advisor, Labour Relations, Montreal
V. Jean-Pierre	– Customer Experience Manager, Toronto
J. Hood	– Customer Experience Manager, Toronto
G. Lavoie	– Customer Experience Manger, Montreal
B. Gibney	– Manager, Customer Experience, Winnipeg
M. Woelcke	– Sr. Manager, RE West, Winnipeg

There appeared on behalf of the Union:

D. Andru	– Regional Representative, Toronto
R. Fitzgerald	– National Representative, Toronto
H. Grant	– Secretary/Treasurer, Halifax
J. Brown	– President, Halifax

AWARD OF THE ARBITRATOR

The collective agreement contains a number of provisions concerning job bidding. Central to the system is the Annual General Bid provided for under article 12.1 which reads as follows:

> **12.1** All employees will be given their choice of run on a General Bid which will be posted once per year. The General Bid will be the last Sunday in May unless otherwise agreed locally. During the open period of the General Bid, assigned employees will remain on their assignments until the effective date of the new assignments.

However, it sometimes becomes necessary for the Corporation to make adjustments between general bids. It has the ability to do so under the provisions of article 12.10 which reads as follows:

> **12.10** When it is necessary to change an Operation of Run Statement between the General Bids prescribed in Article 12.1 to the extent of an increase or decrease of 8 hours or more in a basic four week period, the Local Chairperson concerned will be advised of the particulars and the assignment shall be declared vacant effective with the date of the changed conditions and the run shall be re-bulletined.

In addition to the above, the Corporation can hold a full bid at any time so long as it has the agreement of the Union.

It is common ground that in December of 2011 the Corporation approached the Union by reason of major scheduling changes that would come into effect in January of 2012. The Corporation proposed another full bid, and sought the Union's agreement.

An agreed general bid could potentially adversely impact some employees. Because of that the Toronto base of the Union indicated to the Corporation that it would agree to a General Bid only if certain conditions were met. Those conditions were as follow:

1) No job losses for the Toronto employees, and;

2) The full Union Bid Committee be a full participant and involved from the start to the end, and;

3) There be no plugging of jobs by management after the Bids are finalized by the Bids Committee (meaning assignments will not be padded by the Corporation with extra work to lessen the layover days or increase the number of hours worked).

4) Employees not lose any guarantee of hours due to being displaced.

It is not disputed that there are Bids Committees normally constituted both at Montreal and Toronto to oversee the operation of General Bids. The Union maintains that in respect of the General Bid of January 24, 2012 the Corporation failed to honour the obligation of consulting and working with the Bid Committee. In addition, it maintains that its agreement to the bid must be viewed as null and void, to the extent that the conditions reproduced above were not honoured. In the end, the General Bid resulted in the loss of two jobs at Toronto and the addition of two jobs at Montreal. That, the Union maintains, involves a failure of the conditions attached to the Union's agreement to the General Bid.

The Corporation asserts that there has been no loss of work, and therefore no violation of the condition now asserted by the Union with respect to the Toronto local. It maintains that the loss of two positions at Toronto is balanced by the addition of two positions in Montreal, and that overall there is in fact no loss of work. On that basis the Corporation argues that there was no violation of any understanding with respect to the General Bid.

The Arbitrator has some difficulty with that argument. Firstly, it must be stressed that the Corporation could not conduct a General Bid outside of the May bid unless it had the agreement of the Union. Most importantly, the language of article 12.1 would indicate that it must have the agreement of the local Union. In my view there can be no other interpretation of the words "… unless otherwise agreed locally." which appear in article 12.1. In other words, there could be no General Bid unless the Montreal local and the Toronto local separately agreed to it. In that framework I am satisfied that both

locals could assert conditions which, if accepted by the Corporation, would become binding as a condition to conducting an exceptional General Bid.

Upon a review of the material I am not satisfied that the Union has demonstrated that the Corporation failed to properly engage the Bid Committee. The record confirms an extensive meeting held in Kingston and a further full day in Toronto prior to the completion of the bids. That aspect of the grievance cannot, therefore, succeed.

However, on the more fundamental question of whether the Corporation conducted a bid outside the agreement of the Toronto local, the answer must be in the affirmative. I am satisfied that the Corporation was bound to honour the condition put forward by the Toronto local, namely that there should be no loss of jobs at Toronto if an exceptional General Bid was to be held.

In the result, I am compelled to conclude that the Corporation did violate the collective agreement in the manner in which it conducted the General Bid. In accordance with the request of the Union, I direct that two article 8 notices be provided for the two positions abolished in Toronto and that the formerly assigned employees forced to the spareboard should have the benefit of maintenance of earnings.

September 18, 2012

(signed) MICHEL G. PICHER
ARBITRATOR