

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4246**

Heard in Montreal, October 9, 2013

Concerning

VIA RAIL CANADA INC.

And

CANADIAN NATIONAL RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
(Locomotive Engineers)**

DISPUTE:

Eligibility of Mr. Mario Lemonde, Locomotive Engineer Central District, to transfer from CN to VIA under the Special Agreement.

COMPANY'S ExPARTE STATEMENT OF ISSUE:

On June 4th, 1987 Canadian National Railway Company, VIA Rail Canada Inc. and the Brotherhood of Locomotive Engineer entered into the Special Agreement permitting Locomotive Engineers, with a seniority date prior to January 1, 1988, to transfer from CN to VIA.

The parties agree that for the Central District at CN, Mr. Fred Boimstruck, whose seniority date is January 1, 1988, is considered to be the junior Locomotive Engineer eligible to transfer to VIA for that district.

On the Central District Seniority list at CN. Mr. Lemonde ranks senior to Mr. Boimstruck even though his Locomotive Engineer's seniority date is January 01, 1990. This was as the result of the resolution of a dispute between CN and the Central TCRC GCA, concerning the order of training for the position of Locomotive Engineers in the late 1980s. CN and the TCRC Central District corrected the issue by re-positioning the affected employees on the TCRC Central seniority list.

Since 1994, it has been the practice to allow Locomotive Engineers to transfer from CN to VIA whose seniority ranking was superior to that of Mr. Boimstruck on the Central District.

On September 24, 2012 the Union grieved the transfer of Mr. Lemonde as he was not eligible to transfer to VIA under Article 4 of the Transfer Agreement.

On December 4, 2012 the Union the grievance was addressed to the Minister of Transport as per the Special Agreement Article K. The Minister of Transport referred the issue to the Federal Mediation and Conciliation Service which was unsuccessful in resolving the issue of Mr. Lemonde's eligibility to transfer to VIA.

CN and VIA are prepared to allow Mr. Lemonde to remain at VIA Rail based on the long standing practice. They also agree that the terms of the Special Agreement will be strictly applied hereafter.

The Union does not agree.

**FOR THE UNION:
(SGD.)**

**FOR THE COMPANY:
(SGD.)**

There appeared on behalf of the Company:

E. Houlihan	– Via Director Employee Relations, Montreal
G. Sarazin	– Senior Advisor Labour Relations, Montreal
D. Gagne	– CN Senior Manager Labour Relations, Montreal
D. Larouche	-- Labour Relations Manager, Montreal

There appeared on behalf of the Union:

R. Leclerc	– General Chairman, Grand-Mere
J. M. Halle	– Senior Vice General Chairman, Joffre

There appeared on behalf of the Union as Intervenor:

K. Stuebing	– Counsel, Toronto
R. Caldwell	– General Chairman, Bancroft
P. Vickers	– Retired General Chairman, Sarnia
P. Boucher	– Vice General Chairman, Belleville
B. Willows	– General Chairman, Edmonton
B. Ermet	– Vice-General Chairman, Edmonton
M. Lemonde	– Grievor, Montreal

AWARD OF THE ARBITRATOR

The dispute between the parties, namely the Canadian National Railway Company ("CN"), Via Rail Canada Inc. ("VIA") and the Teamsters Canada Rail Conference ("TCRC") stems from the transfer of Locomotive Engineer Lemonde from CN to VIA. Mr. Lemonde responded to a permanent vacancy bulletined for a position at VIA in the Central Region of the Third District in Montreal. He was awarded the position at VIA on May 22, 2013. The TCRC-Central Region intervened in this proceeding and made submissions on behalf of the TCRC-Central Region.

The relevant facts are as follows:

Until 1987, VIA contracted the services of local engineers from CN for VIA passenger services on lines owned by CN. On June 4, 1987, CN, VIA and the Brotherhood of Locomotive Engineers (“BLE” now the Teamsters Canada Rail Conference “TCRC”) entered into a Special Agreement, commonly known as the “Transfer Agreement”, which provides for the transfer of locomotive engineers between CN and VIA. The applicable provision of the Transfer Agreement is as follows:

Item 7- Application of this Memorandum of Agreement

- (a) This Memorandum of Agreement shall apply only to those Locomotive Engineers who hold seniority under Agreement 1.1 or 1.2 on or prior to January 1, 1988.

Mr. Lemonde’s seniority date is January 1, 1990. Put another way, he did not hold seniority under Agreement 1.1 on or prior to January 1, 1988. Mr. Lemonde was trained as a locomotive engineer at the CN training centre at Gimli, Manitoba between September 14 and October 30, 1987. He completed his field training in 1989. On December 3, 1989, Mr. Lemonde was issued a certificate of qualification as a locomotive engineer. The parties to this proceeding including the intervener TCRC-Central Region therefore all agree that Mr. Lemonde’s seniority date is January 1, 1990.

Irrespective of the amalgamation of the District 3,4 and 6 of the Central District seniority lists in 1993, whereby CN and TCRC-Central Region agreed to reposition employees on the Central District seniority list, Mr. Lemonde’s seniority date (or his

“holding” of seniority) did not change. Since Mr. Lemonde’s seniority date is after January 1, 1988, he was not eligible to transfer to VIA pursuant to the Transfer Agreement.

I note that the TCRC-Central Region takes no position on the particular facts of Mr. Lemonde’s case. It accepts that an employee’s “holding” of seniority is the only relevant criterion for determining eligibility to transfer to VIA under the Transfer Agreement. In the circumstances before me it is unnecessary to make any determination on the issue of estoppel against the “Companies” as referenced in its brief and I decline to do so.

I have considered the parties’ respective positions on the appropriate remedy in this case. I am prepared to grant the TCRC’s request. I order CN to cease and desist from applying the Transfer Agreement to locomotive engineers whose seniority date is after January 1, 1988.

As for Mr. Lemonde, he has expressed the desire to remain at VIA. Mr. Lemonde (and apparently 24 other individuals before him who also transferred to VIA) was under the misapprehension that the Transfer Agreement applied to him. That issue has now been resolved. In all the circumstances, it is appropriate that Mr. Lemonde remain at VIA and maintain his seniority date of January 1, 1990, and I so order.

October 14, 2013

CHRISTINE SCHMIDT
ARBITRATOR