CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1615

Heard at Montreal, Tuesday, February 10, 1987

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Filling of positions under 12.7 of Collective Agreement No. 1.

JOINT STATEMENT OF ISSUE:

Mr. G. Eng submitted a written application under Article 12.7 which was previously awarded (not assigned) to an employee with lesser seniority out of a different department.

The Brotherhood's contention is that the intent of Article 12.7 is to fill the known vacancy with the Senior employee who so desires the position as locally arranged. In the absence of such arrangement, further claiming that the Department Head cannot bypass employees of his own department nor does Article 12.7 allow the Corporation to overlook the senior qualified employee who is available.

The Corporation had denied the Brotherhood's contention and maintains that the awarding of positions in accordance with Article 12.7 is not restricted to the senior employee.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) TOM McGRATH National Vice-President	(SGD.) A. D. ANDREW Acting Director, Labour Relations

There appeared on behalf of the Corporation:

M. St-Jules	- Manager, Labour Relations, VIA, H.Q.
C. O. White	- Officer, Labour Relations, VIA, H.Q.
K. Green	- Director, General Accounting, VIA, H.Q.
C. Pollock	- Officer, Labour Relations, VIA, H.Q.

And on behalf of the Brotherhood:

T.N. Stol	- Regional Vice-President, CBRT &GW, Toronto

AWARD OF THE ARBITRATOR

The narrow issue is whether Article 12.7 contemplates the assignment of a temporary vacancy to "the" senior qualified employee. It is not

disputed that an employee junior to the grievor was given the assignment that is the subject of this grievance, being a temporary assignment for approximately 10 days.

Article 12.7 provides as follows:

> Temporary vacancies of ten working days or less, and vacancies in other positions pending occupancy by the successful applicant may be filled by a qualified senior employee at the station or terminal affected, who desires the position, without the necessity of advice notice or bulletin. An employee filling a temporary vacancy pending occupancy by the successful applicant will not be subject to displacement during the first 30 days of occupancy. When it is known that a temporary vacancy will occur, employees desiring the position may be required, as locally arranged, to make their intentions known some time prior to the starting time of the vacancy. The employee, so assigned, will not be subject to displacement during such period, except by a senior qualified employee unable to hold work at the station or terminal affected.

The language of the foregoing Article was interpreted in CROA 710, a grievance involving the instant Union and the predecessor of the Corporation, the Canadian National Railway Company. The Arbitrator in that award elaborated reasons why Article 12.7 is drafted in terms that preserve the discretion of the Company to fill temporary vacancies with the least disruption to its normal operations. He specifically concluded, in my view correctly, that the ability of a Company to fill a position by selecting "a qualified senior employee" does not require the employer to assign the position to "the" senior employee who may wish to have it. That interpretation has been plainly known to the parties at least since 1979, and no material amend ment of the Article has been made since that time. In the circumstances I must find that the interpretation advanced by the Corporation is correct, and the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR.