CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1680

Heard at Montreal, Tuesday, September 8, 1987

Concerning

VIA RAIL CANADA

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Time claim of 65 hours, 50 minutes at Service Manager's rate of pay on behalf of spare board employee S.M. Demchuk.

JOINT STATEMENT OF ISSUE:

On August 8, l986 a temporary vacancy occurred for the position of Service Manager on Train 1-2 Winnipeg/Vancouver and return. In that there were no qualified Service Managers available to fill the vacancy, the Corporation called Mr. Demchuk, a spare board employee, who was on rest at the time, during the normal calling hours, to protect the assignment, knowing that he was not qualified as a Service Manager. Mr. Demchuk accepted the call.

Later that day, the grievor was informed, outside the call hours, that a qualified Service Manager arriving from a trip was called for the trip.

The Brotherhood grieved the matter, and at Step 1 of the grievance procedure was requested to identify the article that was allegedly violated. In response, the Brotherhood stated: "The Corporatin has violated all of the rules of Article 7."

The Corporation has denied the Brotherhood's claim, maintaining that there was no violation of Article 7 of Collective Agreement No. 2.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
National Vice President

FOR THE CORPORATION

(SGD.) A.D. ANDREW
Acting Director
Labour Relations

There appeared on behalf of the Company:

C.O. White - Labour Relations Officer, Montreal
C. Pollock - Labour Relations Officer, Montreal
J. Kish - Personnel & Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. Cerilli - Regional Vice-President, Winnipeg
T.N. Stol - Observer, Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The grievor, Mr. S.M. Demchuk, worked as a Senior Service Attendant and Service Attendant on the Company's spareboard in Winnipeg. On August 8 a temporary vacancy arose for the position of Service Manager on Train 1-2 Winnipeg to Vancouver and return. As the spareboard was exhausted of qualified Service Managers the grievor was called during the specified calling hours to fill the assignment. Later that day, several hours prior to the scheduled trip, he was advised by the crew clerk that a qualified Service Manager had since become available and that he would be no longer required. The grievor claims entitlement to payment from August 8 through August 13, 1986, being 65 hours and 50 minutes at a Service Manager's rate of pay.

The Arbitrator is satisfied that the initial call made to the grievor was pursuant to Article 7.8 (d) i which provides as follows:

> (d) When the entire spare board is exhausted of qualified employees, qualified laid-off employees will be called in seniority order. If qualified laid-off employees are not available, positions will be filled in the following order:
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> (1) Qualified assigned employees who have declared themselves, in writing, as available for work during layover, including additional layover, in seniority order providing the assignment can be completed during such layover days and the rate of pay for the classification required is equal to or higher than their assigned position.

It is common ground that the parties have locally established hours of call for spareboard employees, between 8:00 A.M. and 10:00 A.M., under Article 7.7 of the Collective Agreement. If the Company's contention is correct an employee might be called during that period and commit himself to accept an assignment, perhaps making personal or family arrangements in consequence of that decision, only to be told at a later time that the assignment is no longer available to him. In the Arbitrator's view that possibility appears inconsistent with the entire concept of the spareboard and the establishment of fixed hours of call. While it is true, as noted in CROA case #604 that the Company is entitled to offer an assignment to a qualified person over one who does not have equal qualifications, that case does not address the issue of whether a call can be cancelled to

allow the Corporation to assign another individual to it. It appears that the parties have accepted over the years that the employer is entitled to cancel a call when the assignment that is the subject of the call is itself no longer in existence. That would arise, for example, where for unforeseen reasons a number of cars are not utilized on a train, as previously expected, and fewer employees are needed. The Corporation has offered no evidence, however, to establish any practice whereby the calls of individual spareboard employees have been cancelled simply because the same work is subsequently assigned to another employee.

In the instant case the Corporation was not obliged to call the grievor. When it chose to do so, however, he was entitled to assert his right to accept the assignment, subject only to the assignment itself being cancelled. In the circumstances he is entitled to be paid pursuant to the provisions of Article 7.12 of the Collective Agreement. Such payment, however, should be reduced by the wages which he actually earned during the period in question.

For the foregoing reasons the grievor shall be paid his claim of 65 hours and 50 minutes, at Service Manager's rate, subject to an abatement of 4 hours for terminal duty which he performed on August 11, 1986. I remain seized of this matter in the event of any dispute between the parties respecting the quantum of compensation.

MICHEL G. PICHER
ARBITRATOR