CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1739

Heard at Montreal, Wednesday 13 January 1988

Concerning

VIA RAIL CANADA INC.

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Reduction of crewing levels on Train 9/1 and 2/10.

JOINT STATEMENT OF ISSUE:

Due to an impending change of equipment effective October 26, 1986, the Corporation issued a three-month notice on July 25, 1986 in accordance with Article 23.3 of Collective Agreement No. 2. A further review concluded that the three-month notice was not necessary and it was rescinded. The Brotherhood was informed on September 18, 1986 and advised that Article 13 of the Collective Agreement would apply to any staff reductions or displacements.

The Brotherhood cites a violation of Article 23.3 and maintains that the adversely affected employees should receive the benefit of the Special Agreement and/or the Supplemental Agreement; furthermore that the four employees transferred from the Diner to the Skyline Car be given displacement rights, and that subsequent vacancies be bulletined as per Articles 12 and 13.

The Corporation denied the grievance maintaining that the ten Service Attendant positions were abolished as a result of a reduction in passenger traffic, and in such cases, Article 23.3 states that Article 13.2 shall apply.

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

There appeared on behalf of the Company:

M. St.Jules	Manager, Labour Relations, Montreal
C.O. White	Labour Relations Officer, Montreal
J. Kish	Officer, Personnel and Labour Relations Montreal
A. Henery	Officer, Human Resources, Toronto

C. Pollock Officer, Labour Relations, Toronto

And on behalf of the Brotherhood:

Mr. T.N. Stol General Chairman, Toronto

AWARD OF THE ARBITRATOR

The pertinent provisions of the Collective Agreement are as follows:

> 13.2 In instances of staff reduction 14 calendar days' advance notice will be given to regularly assigned employees whose positions are to be abolished, except in the event of a strike or a work stoppage by employees in the railway industry, in which case a shorter notice may be given.
>
> 23.2 Minimum crew consist will be in accordance with the organizational charts in the attached Appendix 3. The foregoing shall not prevent changes in crew complements brought about by fluctuation of traffic in which case Article 13.2 shall apply.
>
> 23.3 No reductions of a permanent nature from the minimum shown in Appendix 3 shall be made without giving at least three months' advance notice to the Regional Vice-President of the Brotherhood pursuant to Article J of the special Agreement and/or Article 8 of the Employment Security and Income Maintenance Agreement before implementing such change. (emphasis added)

The grievance relates to the reduction of crewing levels on Trains 9/1 and 2/10, in service from Montreal/ Toronto to Winnipeg and return, effective October 26, 1986. The organizational chart for those trains is contained in Appendix 3. It is common ground that the change implemented by the Company resulted in the reduction of the On-Board Services crew by one position. The car consist of the train was altered by removing the Caf Coach Car and the Dining Car while adding a second Skyline Car. It is not disputed that the Skyline Car is equipped to provide the dining, take-out and beverage services that would have been provided on the Caf Coach and the Dining Car.

On the material filed, the Arbitrator is satisfied that the adjustment implemented by the Company was in response to a marked reduction in ridership anticipated and subsequently demonstrated for the four month period commencing with October of 1986 as compared with the same period in 1985.

The Union firstly alleges that the Company's actions required it to give the Brotherhood a notice as outlined in Article 23.3. With this contention the Arbitrator cannot agree. In my view the words "reductions of a permanent nature" must be construed as having reference to the permanent elimination of a form of service from a train, and has no application to the reduction of the crew complement

where the crew continues to perform the same services that were previously available. As I am satisfied that the adjustment made by the Company was in response to a fluctuation of traffic within the contemplation of Article 23.2, this is not a case where the Corporation was under an obligation to give the Brotherhood a notice within the meaning of Article 23.3.

The Union further contends that the four positions established in the Skyline Car should have been bulletined under Article 12.3 of the Collective Agreement which provides as follows:

> 12.3 Vacancies in regularly assigned positions, temporary vacancies and newly-created positions any of which are known to be of 30 calendar days' duration or more, shall be bulletined on their respective seniority regions within 5 calendar days of the vacancy occurring except as provided for in Article 12.1.

It is not disputed that the incumbents in the four positions in fact perform the same duties on the Skyline Car as they would have originally performed on the Dining Car which was their initial assignment. In these circumstances I must agree with the Company that the positions of the four employees were not abolished, and that the individuals were not displaced. Consequently, they were not in a position to exercise their seniority under Article 13 of the Collective Agreement, and there was nothing to be bulletined under Article 12.3, as no new position was created. In so far as these employees are concerned what transpired was a change of equipment on which they were to fulfil their assignments and not the creation of a new position.

For the foregoing reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR