CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1880

Heard at Montreal, Tuesday, 14 February 1989

Concerning

VIA RAIL CANADA INC.

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

A time claim for 32 hours on behalf of Mr. P. Dotzko.

JOINT STATEMENT OF ISSUE:

Due to a national work stoppage by CN and CP, VIA laid off its employees from August 25 to August 28, 1987 inclusive in accordance with a Memorandum of Agreement between VIA and the C.B.R.T. & G.W., signed on August 13, 1987.

In line with the Memorandum of Agreement, employees were permitted to use vacation days during the lay off period in order to minimize the adverse economic impact. On August 24, 1987 at 16:30 hrs. E.D.T., a Mutual Agreement pursuant to the Memorandum of Agreement was reached to maintain the position of Receptionist at the VIA Ontario regional office in Toronto.

As the majority of the employees had departed by the time the Mutual Agreement was reached, qualified employees for that position were contacted, in seniority order, that evening.

Although Mr. Dotzko had exercised his prerogative to use vacation time instead of being laid off, the Corporation attempted to contact him when the most senior employee declined the offer to work. The Corporation was unable to reach Mr. Dotzko and then went down the seniority list until - three people later - Ms. T. White, a more junior employee, accepted the assignment.

The Brotherhood alleges that the Corporation was aware that a member of the Brotherhood must be used to do all bargaining unit work, and that Mr. Dotzko was available for work and was not asked in accordance with Collective Agreement #1.

The Brotherhood seeks that Mr. Dotzko's vacation time to be moved to a latter date and that he be paid, pro rata, for the 32 hours of work that Ms. White performed.

The Corporation claims that Mr. Dotzko was not available for work and therefore is not entitled to claim the wages. The Corporation further contends that there was no violation of the Memorandum of

Agreement nor of any Articles of Agreement #1, and therefore declined the grievance.

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

There appeared on behalf of the Company:

C. O. White - Labour Relations Officer, Montreal
M. St-Jules - Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

M. Pitcher - Representative, Toronto

AWARD OF THE ARBITRATOR

It is not disputed that the Corporation was required to call employees in their order of seniority to fill the vacancy in the receptionist's position. It is also common ground that the position fell under the terms of Paragraph 5 of the Memorandum of Agreement executed jointly by the parties on August 13, 1987, which provides:

> 5. It may be necessary in certain circumstances to maintain some positions as mutually arranged.

The displeasure which gives rise to this grievance is prompted by the Union's belief that if the Corporation had been more decisive in determining to fill the receptionist's position with a bargaining unit employee earlier in the day the grievor, who was then at work, could have been contacted and given the opportunity to accept the job. As it happens, the decision to assign the work within the bargaining unit was not made until 4:30 p.m., when the grievor and other employees had left.

As understandable as the grievor's frustration may be, there is no provision within the Collective Agreement of which the Arbitrator is aware which places a time limit on the Corporation's decision to fill a particular position. Indeed, the circumstances at hand were clearly unusual, arising as they did from a general work stoppage, a fact that is acknowledged by the extraordinary provisions of the Memorandum of August 13, 1987. Moreover, that document contemplates a certain amount of mutual discussion between the parties with respect to maintaining bargaining unit positions.

In the instant case the Arbitrator does not have jurisdiction to dispose of the grievance on the basis of whether it would have been more equitable for the grievor to have been assigned the work in question. The sole issue to be resolved is whether the Collective Agreement, and any other arrangement between the parties such as the special memorandum, were complied with in the circumstances. There is no suggestion in the evidence of any bad faith on the part of the Corporation, or deliberate gerrymandering of events to deprive the

grievor of his rights.

It is not disputed that, in keeping with normal practice, once it was determined to maintain the position and to assign it to a bargaining unit member, employees were called in order of seniority. The first employee called, being senior to the grievor, declined the position. The grievor was called next, and was not at home, in consequence of which he was considered unavailable. The two next most senior employees were reached by telephone and declined the position and Mr. T. White, the fifth and least senior of the employees called, finally accepted it. In the circumstances then prevailing, and in light of the terms of the Memorandum of Agreement signed by the parties to deal with the extraordinary circumstances of the work stoppage, the Arbitrator can find no violation of the Collective Agreement, the Memorandum or any other right of the grievor.

For the foregoing reasons the grievance must be dismissed.

February 17, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR