CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2052

Heard at Montreal, Wednesday, 12 September 1990

Concerning

VIA RAIL CANADA INC.

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Grievance on behalf of Ms. C. Tataryn, who was allegedly denied French Language Training.

JOINT STATEMENT OF ISSUE:

Following her application for language training in response to the Training Bulletin issued January 1987, the grievor was not accepted for training as there were no classes in session that corresponded with her evaluated level of French comprehension.

The Brotherhood contends that the grievor should be allowed training in that in the absence of a mutual agreement, seniority should be the governing factor in selecting candidates in accordance with Appendix 6. The Brotherhood further contends that the grievor as forced to take the spareboard while junior employees were working as Assistant Service Coordinator in violation of Appendix 6.

The Brotherhood is requesting that the grievor be provided language training and placed on a position of Assistant Service Coordinator.

The Corporation has declined the grievance stating that the grievor will be provided language training when a class corresponding with her level of French is established.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD) TOM McGRATH NATIONAL VICE-PRESIDENT	(SGD) C. C. MUGGERIDGE DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. O. White	Senior Officer, Labour Relations, Montreal
A. LŠger	Senior Negotiator and Advisor, Labour Relations, Montreal
M. St-Jules	Senior Negotiator and Advisor, Labour Relations, Montreal
J. R. Kish	Personnel and Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. Cerilli Regional Vice-President, Winnipeg
T. McGrath National Vice--President, Ottawa

AWARD OF THE ARBITRATOR

The material establishes that the Corporation has for some years maintained five designations of language proficiency levels. Levels A, B and C are classified as unilingual levels while Levels D and E are rated bilingual. Further, it is not disputed that for many years the Corporation made bilingualism a requirement for the position of Assistant Service Coordinator, as it did previously under the designation which existed prior June 13, 1986, Passenger Service Assistant. The duties of the Assistant Service Coordinator established within the job description found within Appendix 9 of the Collective Agreement include the following:

Makes all bilingual announcements re train delays, time changes and meal sittings throughout train.

Assists Service Manager and Service Coordinator with provision of service to passengers in both "Official Languages".

In the view of the Arbitrator the foregoing provision reflects the understanding of the parties, as early as 1986, that the Assistant Service Coordinator's position would be acknowledged as bilingual within the very terms of their Collective Agreement.

Further, Appendix 8 of the 1985--1986 Collective Agreement reflects the recognition of the parties that the providing of further bilingual services by the Corporation and "... measures to increase the levels of bilingual service to customers and the public by out-front employees ..." were the subject of discussion and an agreement to conduct further negotiations during the closed period of the then new contract. Those efforts appear to have resulted in Appendix 6 of the Collective Agreement which was introduced on August 13, 1987. It contains the following provision:

On or about September 1, 1987, and on a yearly basis thereafter, Regional Representatives of the Brotherhood and the Corporation will meet to establish the bilingual needs for their respective Regions for the ensuing twelve months.

The appendix respecting bilingualism makes provision for regional negotiations and the designation of bilingual positions, as well as the provision of training to employees to achieve a degree of working bilingualism. The language of the appendix provides, in part, as follows:

A language training bulletining will be posted twice per year for a 15-day period, inviting applications from employees desiring to qualify in the bilingual requirements for positions covered by this Agreement. Unilingual employees will be given language training in seniority order, or as mutually arranged. Employees undergoing language training will be paid at the classification rate of pay last worked immediately prior to taking such training.

After a position has been designated bilingual, efforts to staff it with a bilingual employee will be made if and when the regularly assigned position becomes vacant due to retirement, resignation, death, dismissal, bidding off and general bid. Bilingual employees who are working on other positions will not be forced to fill bilingual positions.

Unilingual employees will not be laid-off or forced to take the spare board solely because they are not bilingual. If, in the case of a reduction of staff, a unilingual employee would otherwise have been laid off solely because he is not bilingual, he would in that case be permitted to displace a junior employee from a designated bilingual position.
(emphasis added)

The record reveals that on May 8, 1987 the grievor was tested and ranked as being at a C level of language proficiency, which, under the Corporation's system of designation, would have qualified her for positions in unilingual service. In her grievance, received by the Corporation on September 30, 1987, Ms. Tataryn maintained that she should be trained to a higher level of proficiency to qualify for a bilingual position, and expressed particular concern that she had been advised that an advanced class at her level might not be available for some time. She therefore requested the training necessary to allow her to hold the position of Assistant Service Coordinator, a position then being filled by bilingual employees junior to herself. Her grievance also requests enrolment in a then pending "Level II" class which was scheduled to commence on October 13, 1987 in Winnipeg.

The material establishes to the satisfaction of the Arbitrator that the Level II course contemplated by the grievor was in fact training at the B Level of language instruction, which was below Ms. Tataryn's then skill rating of Level C. I can therefore see no merit in her grievance in so far as it relates to a denial of access to that training program. The material further establishes that Ms. Tataryn did commence French language training on October 18, 1988, resulting in her eventual reevaluation and reassessment to the rank of Level D in August of 1989. Thereafter she moved to the rank of Assistant Service Coordinator.

The first issue of substance raised by the grievance is whether the Corporation violated the Collective Agreement, and in particular the provisions of Appendix 6 on bilingualism, by effectively denying the grievor work as an Assistant Service Coordinator while she was, for a time, forced to take the spare board. If the Brotherhood's contention is correct, Ms. Tataryn could, while still designated as a unilingual employee, have displaced into an Assistant Service

Coordinator's position as that would, in its submission, be a designated bilingual position within the meaning of Appendix 6.

The first issue, therefore, is whether the introduction of Appendix 6 effectively eradicated the preexisting establishment of the Assistant Service Coordinator's job as a bilingual position and whether the appendix makes that job accessible to unilingual employees who would otherwise be laid off or forced to take the spare board.

In the Arbitrator's view the Brotherhood's position on this aspect of the grievance is not compelling. As is abundantly apparent from the preamble to Appendix 6, the purpose of that agreement is to allow the parties, on a regional basis, to meet to discuss and establish the bilingual service needs for the respective regions over each twelve month period, on an annual basis. That purpose and understanding must, however, be construed within the greater context of the Collective Agreement itself, and such specific provisions as it may otherwise contain in respect of bilingual positions.

It is clear from the agreed job description of Assistant Service Coordinator, reproduced in part above, that both before and after the agreement contained in Appendix 6, the parties recognized the Assistant Service Coordinator's position to be specifically bilingual. In the Arbitrator's view, positions which are "designated bilingual" within the meaning of Appendix 6 are those further positions identified separately by the parties in their meeting on or about September 1, 1987 and annually thereafter, as being appropriate for additional bilingual service. It is, in the Arbitrator's view, clear that the protections of employees not to be laid off or to be forced to take the spare board, with the right to displace into a designated bilingual position, extends only to those positions which are designated bilingual under the terms of Appendix 6. The Assistant Service Coordinator is not such a position. Its status as a bilingual position predates and stands apart from the terms of Appendix 6.

In the Arbitrator's view if the parties had intended to circumscribe the Corporation's right, and amend their own agreement, in respect of the bilingual requirements of the Assistant Service Coordinator's job, they would have done so clearly and expressly in the terms of the Appendix, or would otherwise have amended the job description for that position as it appears under Appendix 9. In the absence of any such amendment, I must accept the Corporation's position that the grievance is without merit in so far as it claims that Ms. Tataryn could not, when she was classified as a unilingual employee, be forced onto the spare board and be denied access to a position as an Assistant Service Coordinator. For the reasons touched on above, I am further satisfied that she was not wrongfully denied access to language training appropriate to her level, as none became available until October of 1988, at which time she was enrolled.

For the foregoing reasons the grievance must be dismissed.

September 14, 1990

MICHEL G. PICHER
ARBITRATOR