CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2093

Heard at Montreal, Tuesday, 8 January 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Time claim on behalf of C. Tataryn for deadheading Vancouver to Winnipeg on June 27, 1988.

JOINT STATEMENT OF ISSUE:

On June 27, 1988, during a return trip, ex Vancouver, Train No. 2 employees selected activity cars in accordance with the provisions of Article 12.6(b). The only remaining position available to the grievor was a Senior Service Attendant on the "Park Car", which required bed making duties. Due to a medical restriction, the grievor could not assume the position and was replaced by a spareboard employee. The grievor was returned to the home terminal by the first available train, without pay. The Brotherhood contends that the employee is entitled to deadhead pay in accordance with Article 4.10 of Agreement No. 2.

The Corporation maintains that in the absence of a mutual agreement provided in Appendix 7 of the Collective Agreement, it was prevented from assigning the grievor to another car, and has therefore rejected the grievance.

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

There appeared on behalf of the Corporation:

M. St-Jules	-- Senior Negotiators & Advisor, Labour Relations, Montreal
D. Fisher	-- Senior Offier, Labour Relations, Montreal
J. R. Kish	-- Personnel & Labour Relations Officer, Customer Services, Montreal

And on behalf of the Brotherhood:

A. Cerilli	-- Regional Vice-President, Winnipeg
D. Olshewski	-- Representative, Winnipeg

AWARD OF THE ARBITRATOR

The Brotherhood relies on the terms of Article 4.10 of the Collective Agreement which is as follows:

4.10 Employees deadheading on a car or on a pass on railway business shall be credited with 12 hours for each 24-hour period and actual time up to 12 hours for less than a 24-hour period (time to be computed from reporting time to release time).

It is not disputed that when Ms. Tataryn was unable to assume a position on the return portion of her trip from Vancouver to Winnipeg because of her medical restriction she was treated by the Corporation under the terms of Article 4.2(c) of the Collective Agreement which provides as follows:

4.2(c) Regularly assigned employees who do not complete their assignment for whatever reason (excluding vacation with pay) will be entitled to minimum hours as follows:

$$\frac{\text{No. of Days Worked (including layover days)}}{\text{No. of Days in 8-week period.}} \times 320$$

In the Arbitrator's view the foregoing article speaks directly to the circumstances of the case at hand. The grievor was plainly an employee who did not complete her assignment, within the contemplation of Article 4.2(c) of the Collective Agreement. I agree with the submission of the Corporation that she was not, on the other hand, in the position of an employee deadheading "... on railway business" within the contemplation of Article 4.10 of the Collective Agreement. It is perhaps unfortunate that the local of the Brotherhood did not negotiate provisions such as have been established elsewhere to give preferential rights to certain work assignments to disabled employees, an arrangement which would have allowed the grievor to work the return trip from Vancouver to Winnipeg in a position whose duties she would have been able to discharge. That, however, is a matter for negotiation between the parties.

The Arbitrator can find nothing CROA 295, cited by the Brotherhood's spokesperson, to support the merit of the instant grievance. That case related to the application of Article 4.25 of the Collective Agreement, a provision which specifically contemplates the payment of an employee's guarantee in the circumstance where his or her movement is rerouted due to an emergency or service disruption. That is plainly not the kind of circumstance which occurred in the instant case, and the Brotherhood has referred me to no comparable provision which would apply in the circumstance of an employee's incapacity to satisfy the requirements of an assigned position.

For the foregoing reasons the grievance must be dismissed.

January 11, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR