CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2106

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Calling Procedures documents for Agreement No. 1 and Agreement No. 2 Employees on employment security status forced to regular part-time assignments at Thompson, Manitoba.

JOINT STATEMENT OF ISSUE:

Following the posting of two regular part-time assignments at Thompson, Manitoba on Regional Bulletin No. 104, dated March 3, 1990 for which there were no applicants, the Corporation called employees on employment security status in Winnipeg, in reverse seniority order to fill the vacancies. Employees who refused the positions were removed from employment security status and were placed on lay-off benefits.

The Brotherhood maintains that an understanding was reached during the negotiations prior to the January 15, 1990 changes, to the effect that employees would not be required to fill regular part-time assignments outside of their respective home terminals. The Brotherhood also contends that the above understanding was incorporated in the Calling Procedures documents for employment security employees.

The Corporation maintains that any understanding reached would have been in the context that vacant positions would be necessarily filled either by employees on employment security status or laid off status at the specific terminal because of the magnitude of the positions reduced. Furthermore, the Corporation maintains that it was not contemplated at the time that employees would have to be hired to fill vacancies as would have been the case at Thompson, Manitoba.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) A. CERILLI	(SGD.) M. ST-JULES
for: NATIONAL VICE-PRESIDENT	for: DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

M. St-Jules	-- Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock	-- Senior Officer, Labour Relations, Montreal
D. Fisher	-- Senior Officer, Labour Relations, Montreal
R. Wesley	-- Senior Officer, Labour Relations, Montreal
J. Kish	-- Senior Advisor, Labour Relations, Montreal
D. Wolk	-- Manager Customer Services, Montreal
M. M. Boyle	-- Observer
D. David	-- Observer

And on behalf of the Brotherhood:

A. Cerilli	-- Regional Vice-President, Winnipeg
T. McGrath	-- National Vice-President, Ottawa
G. Murray	-- Regional Vice-President, Moncton
R. J. Stevens	-- Regional Vice-President, Toronto
R. Moreau	-- Regional Vice-President, Montreal
J. Brown	-- Representative, Montreal
A. Della Penna	-- Local Chairperson, Montreal
F. Bisson	-- Local Chairperson, Montreal
J-J Journault	-- Local President, Montreal
K. Williams	-- Secretary, Local Grievance Committee, Winnipeg
K. Sing	-- Local Chairperson, Halifax
R. Dennis	-- Local Chairperson, Moncton
L-P Rousseau	-- Member, Local 335, Belleville
L. Robichaud	-- Witness

AWARD OF THE ARBITRATOR

The material establishes, beyond controversy, that during the course of negotiations prior to and resulting in the signing of the Memorandum of Agreement of November 19, 1989, the Corporation represented to the Brotherhood that employees on employment security would not be compelled to protect regular part-time assignments at locations other than their home terminal. This, moreover, was reflected in the calling procedures which the Corporation subsequently promulgated. Notwithstanding that undertaking, however, when it appeared to the Corporation, sometime later, that it did not have any employees willing to assume two vacancies in regular part-time assignments at Thompson, Manitoba, it called employees on employment security status in Winnipeg to fill those vacancies, and removed some nine of them from employment security status when they declined to protect those part-time assignments at the away-from-home terminal.

The facts surrounding the establishment of the calling procedures, and the agreements negotiated between the parties culminating in the Special Agreement and the Memorandum of Agreement dated November 19, 1989 were extraordinary events of substantial consequence to both parties. It appears undisputed, as is admitted in a letter of the Corporation's Director of Labour Relations dated December 17, 1990,

that the Brotherhood was given to understand, prior to executing the agreements in question, that the regular part-time assignments which had not previously existed and to whose establishment the Brotherhood agreed, would not be filled in a compulsory fashion by employees on employment security, except at their own home terminal. Subsequently, when the Corporation discovered that it could find no applicants for part-time assignments at Thompson, Manitoba, it took a position contrary to that undertaking and purported to require employees on employment security at Winnipeg to protect those positions, failing which they would lose their employment security status.

In the Arbitrator's view the conditions so described justify the application of the doctrine of estoppel. The elements of estoppel are made out: the Corporation obtained the agreement of the Brotherhood to the establishment of regular part-time positions, as well as to the terms of the Memorandum of Agreement and the Special Agreement of November 19, 1989, with the specific undertaking that employees on employment security would not be forced onto regular part-time positions other than at their home terminal. The Brotherhood relied to its detriment on that undertaking, and having signed the agreements in question, would be severely prejudiced if the Corporation could resile from its original undertaking. In these circumstances it is no answer for the Corporation to assert that it did not contemplate that there might be vacancies at away-from-home terminals which no employees on employment security would be willing to assume. It is the intention of the agreement, and the undertaking given, and not the thought or expectation held unilaterally by one of the parties, which must govern.

For the foregoing reasons the grievance is allowed. The employees whose employment security status was forfeited by reason of their refusal to accept calls to the vacant regular part-time assignment at Thompson, Manitoba, shall be reinstated into their employment security status, with full compensation for all wages and benefits lost, and without loss of seniority.

February 15, 1991 (Sgd.)MICHEL G. PICHER
ARBITRATOR