

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2107

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Displacement and recalling to work procedures under Article 13 of Collective Agreements No. 1 and No. 2.

JOINT STATEMENT OF ISSUE:

As a result of the train service reduction of January 15, 1990, the Corporation established displacement procedures for employees who were assigned to positions and who were on employment security status.

The Brotherhood maintains that these procedures violate the displacement and recall to work procedures of Agreements No. 1 and No. 2. The Brotherhood further contends that the Corporation's interpretation of Article 7 of the Employment Security and Income Maintenance Plan Agreement (Supplemental Agreement) is in violation of Article 13 of both Collective Agreements.

The Corporation maintains that the displacement procedures are in line with the rules of the Agreements.

FOR THE BROTHERHOOD:

(SGD.) A. CERILLI  
for: NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) M. ST-JULES  
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

For the reasons related in CROA 2074 the Arbitrator is satisfied that the provisions of Article 7 of the Supplemental Agreement take precedence over the recalling to work procedures established under Article 13 of Collective Agreements No. 1 and No. 2. The extraordinary protections of employment security for employees having four years or more of seniority requires those persons to comply with the requirements of Article 7 of the Supplemental Agreements, which itself establishes the concept of employment security.

The Arbitrator is satisfied that employees on employment security who are recalled to perform temporary or seasonal duty, must, prior to resuming their employment security status, exercise their seniority to displace any employee with less than four years' seniority holding a permanent position on the System in either Collective Agreement No. 1 or No. 2 prior to resuming their employment security status. That is consistent with the intention of Article 7.2 of the Supplemental Agreement, the specific provisions of which must be interpreted as qualifying the normal application of Article 13 of the Collective Agreements.

February 15, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR