CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2110

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Whether the Corporation can lay-off employees from the Moncton spareboard between the time an Article J notice, pursuant to the Special Agreement, is issued and the date that it takes effect.

JOINT STATEMENT OF ISSUE:

On October 12, 1989, the Corporation issued an Article J notice, pursuant to the Special Agreement, notifying the Brotherhood of government initiated service reductions to take effect January 15, 1990, abolishing all positions.

On November 24, the spareboard at Moncton was reduced from 21 to 15 employees. On December 17, 1989, the spareboard was augmented and increased to 28 employees to meet the heavy Christmas Holiday traffic. On January 4, 1990, the spareboard was again reduced, due to the decreased traffic volume after the Christmas peak.

The Brotherhood contends that the Corporation was estopped, by virtue of the Article J notice being in place, from affecting any position falling under the 90-day notice. The Brotherhood alleges that the Corporation has violated Article J of the Special Agreement and Article 7 of the Supplemental Agreement.

The Corporation contends that the spareboards were reduced based on the declining volume of passenger traffic, a routine seasonal adjustment, and were not related to technological, organizational or operational changes.

The Corporation denies violating Article J or Article 7.

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:

D. Fisher -- Senior Officer, Labour Relations,

		Montreal
M. St-Jules	--	Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock	--	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

In the Arbitrator's view the circumstances of the instant grievance were fully addressed in the comments of this Office made in CROA 705. The grievance there concerned the contention of another union that employees who were the subject of three-month Article 8 Notices under the terms of a Job Security Agreement could not, during that period, be independently laid off by reason of a downturn in business under the terms of the Collective Agreement. In dismissing that submission the Arbitrator made the following observations:
... Whether such a lay-off was entirely justifiable on business grounds, or not, is not in issue before me. It would appear to have been a "normal seasonal staff adjustment", but in any event it was not the technological, operational or organizational change of which notice had been given. That notice, of November 4, 1977, protected the employees concerned against the early implementation of such a change, but it did not protect them against the ordinary occurrences of their work. In particular, it did not protect them against the brief closing of the terminal over the holiday season. That "adverse effect" was quite unrelated to the technological, operational or organizational change, and was not something against which the employees were protected by the Job Security agreement.

Similarly in CROA 1979 the following observation was made:

It is well established that employees who are the subject of a notice pursuant to Article 8.1 of the Job Security Agreement are not immune from being laid off during the three month notice period, for reasons other than technological, operational or organizational change. They can, in other words, be laid off pursuant to the terms of the Collective Agreement, as a result in a downturn in business. (See CROA 705.)

The material before the Arbitrator discloses that the employees at Moncton were released from the spareboard by reason of a seasonal downturn in business. There is nothing before the Arbitrator to establish that the reduction of the spareboard on January 4, 1990 was for other than the decrease in traffic volume cited in the Joint Statement of Issue. In these circumstances, for the reasons related in the above-quoted awards, the Arbitrator must find that there has been no violation of the terms of the Collective Agreement or of Article J of the Special Agreement and Article 7 of the Supplemental Agreement, as alleged by the Brotherhood. There is, moreover, no ground for the application of the principle of estoppel in this case.

For the foregoing reasons the grievance must be dismissed.

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