CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2111

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Whether employees who were laid-off during the life of an Article J Notice are entitled to the benefits of Employment Security.

JOINT STATEMENT OF ISSUE:

During the period between October 12, 1989 and January 15, 1990, a number of VIA West employees with more than four years' seniority were laid-off without the benefits of Employment Security.

The Brotherhood maintains that employees on the payroll of the Corporation on or after the date that the Article J notice was given to the Brotherhood, October 12, 1990, (sic) must be considered as being affected and should be covered under the Employment Security provisions of Article 7 of the Supplemental Agreement.

The Corporation maintains that the employees in question were not laid-off as a result of the implementation of the Article J notice, effective January 15, 1990, but rather that they were affected by prior changes, resulting from a seasonal fluctuation in traffic and consequently, the Corporation has rejected the Brotherhood's claim at all steps of the Grievance Procedure.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) A. CERILLI for: NATIONAL VICE-PRESIDENT	(SGD.) M. ST-JULES 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	--	Manager, Labour Relations, CNR, Montreal Observer
D. David	--	Industrial Relations, CP Rail, Montreal 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 facts are not in dispute. On October 12, 1989 the Corporation issued an Article J Notice pursuant to the Special Agreement, advising the Brotherhood of a substantial number of job abolishments effective January 15, 1990. As at that date ninety-nine employees protected work on the Winnipeg spareboard. Thereafter, on November 13, the spareboard was reduced to thirty-seven employees because of a reduction in traffic. It was augmented on December 15 by the recall of forty employees to deal with the anticipated holiday traffic of the Christmas and New Years' period. Finally, on January 5, 1990 it was again reduced to thirty-seven employees by reason of the post-holiday downturn in traffic.

The first position advanced by the Brotherhood is that the Corporation violated Article 7 of Collective Agreement No. 2 in that it unilaterally changed the spareboard without obtaining the agreement of the Local Chairperson. On that basis it submits that the employees removed from the spareboard should have the protections of the original Article J Notice.

In the circumstances of this case, that position cannot succeed. The unchallenged representation before the Arbitrator is that the Brotherhood's Local Chairman consistently failed and/or refused to meet with the Corporation to discuss the reduction of the spareboard, an event which would normally have occurred pursuant to the terms of Article 7.2 of the Collective Agreement which provides, in part, as follows:

The number of employees on the spare board shall be regulated, as agreed upon between the Corporation and the Local Chairperson, in

order to provide as closely as possible, the basic hours in a four-week period.

In the Arbitrator's view the foregoing provision reflects the agreement of the parties that the spareboard is to be maintained at a number of employees which will provide, as far as can be done, hours of work to them which approximate the basic hours in a four-week period. It appears doubtful to the Arbitrator that it is open to the Local Chairperson in the location of any of the five spareboards under Article 7.1 of the Collective Agreement to effectively undermine, if not abolish, the application of that article at will by merely refusing to meet and discuss with the Corporation the reduction of the spareboard as necessitated by objective business conditions. It is, in any event, unnecessary to draw that conclusion for the purposes of this grievance, as I am satisfied that the principles of equity do not allow the Brotherhood to plead a failure of consultation and agreement in these circumstances, where it appears beyond dispute that the failure of agreement was of its own making. For these reasons the initial position of the Brotherhood must be dismissed.

A second issue raised concerns the removal of employees from the spareboard at Winnipeg because of the transfer, by the exercise of seniority, of some eight employees from the Vancouver spareboard to the Winnipeg spareboard during the period immediately prior to January 15, 1990. The Brotherhood argues that the Vancouver employees did not have the right to so exercise their seniority, and that, in the result, some eight Winnipeg employees were removed from active service on the spareboard, and thereby deprived of the benefits of the Article J Notice effective January 15, 1990.

The Arbitrator has some difficulty with the position advanced by the Brotherhood. Article 10.1 of the Collective Agreement establishes four separate seniority groupings, one of which is VIA West. It is common ground that VIA West includes both Vancouver and Winnipeg. In the result, therefore, the employees on the spareboard at both of those locations are part of a common seniority group for the purposes of the Collective Agreement. Displacement is governed by Article 13 of the Collective Agreement which provides, in part, as follows:

> 13.3 Employees whose positions are abolished or who are displaced may exercise their seniority up to cut-off time displacing junior employees from any regular assignment or elect to operate on the spareboard providing they have the required qualifications.

In the Arbitrator's view it is difficult to conclude, absent some clear provision elsewhere within the Collective Agreement to the contrary, that the above provision would not apply to the Vancouver employees who exercised their seniority to displace onto the spareboard at Winnipeg. Absent clear collective agreement language or a consistent and long-standing practice to the contrary, it should be presumed that employees within a common seniority group are entitled to exercise their seniority rights without limitation within that group. In the instant case, as noted, there is no language to the contrary within the Collective Agreement. Moreover, the material presented to the Arbitrator establishes that there has, over the

years, been repeated movement between the two spareboard locations in VIA West by employees exercising their seniority to move from one spareboard to the other. Indeed, this practice has also been reflected in VIA Atlantic, where employees have exercised seniority to move between the spareboards at Halifax and Moncton. In these circumstances, given the language of the Collective Agreement and the practice disclosed, the Arbitrator cannot sustain the position of the Brotherhood that the employees at Winnipeg displaced by the senior employees from the Vancouver spareboard were wrongfully deprived of the protections of the Article J Notice effective January 15, 1990.

In the result, the employees at Winnipeg who were no longer in spareboard service effective January 15, 1990, by reason of the depletion of the spareboard, are indistinguishable from the employees at Moncton whose claim for Article J protection was denied in CROA 2110. For the reasons stated in that award, the instant grievance must also be dismissed.

February 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR