

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2114

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

A claim to be allowed to displace onto the position of Assistant Service Coordinator or failing that to be provided with training and maintenance of earnings protection, under the provisions of Appendix 6 of Collective Agreement No. 2 and on behalf of 14 employees at Halifax, N.S.

JOINT STATEMENT OF ISSUE:

In line with the service reductions that took effect January 15, 1990, the Corporation abolished all positions within Collective Agreement No. 2 and bulletined new positions on a Special General Bid. The 14 employees in question applied for the position of Assistant Service Coordinator (ASC), but none were awarded the position since they did not possess the bilingual qualifications required by the Corporation.

The Brotherhood contends that the position of Assistant Service Coordinator falls within the scope of Appendix 6 of Collective Agreement No. 2 and that consequently, the grievors should be provided with maintenance of earnings based on that rate effective January 15, 1990, and also that they be provided with training. The Corporation denies any violation of the Collective Agreement and contends that Appendix 6 does not apply to the position of Assistant Service Coordinator. The Corporation also contends a similar issue was addressed by the Arbitrator in CROA 2052.

FOR THE BROTHERHOOD:

(SGD.) T. McGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

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

In the Arbitrator's view the Corporation is correct in characterizing the facts of this case as falling entirely within the principles canvassed in CROA 2052. In that award the following comment was made:

The first issue, therefore, is whether the introduction of Appendix 6 effectively eradicated the preexisting establishment of the Assistant Service Coordinator's job as a bilingual position and whether the appendix makes that job accessible to unilingual employees who would otherwise be laid off or forced to take the spare board.

In the Arbitrator's view the Brotherhood's position on this aspect of the grievance is not compelling. As is abundantly apparent from the preamble to Appendix 6, the purpose of that agreement is to allow the parties, on a regional basis, to meet to discuss and establish the bilingual service needs for the respective regions over each twelve month period, on an annual basis. That purpose and understanding must, however, be construed within the greater context of the Collective Agreement itself, and such specific provisions as it may otherwise contain in respect of bilingual positions.

It is clear from the agreed job description of Assistant Service Coordinator, reproduced in part above, that both before and after the agreement contained in Appendix 6, the parties recognized the Assistant Service Coordinator's position to be specifically bilingual. In the Arbitrator's view, positions which are "designated bilingual" within the meaning of Appendix 6 are those further

positions identified separately by the parties in their meeting on or about September 1, 1987 and annually thereafter, as being appropriate for additional bilingual service. It is, in the Arbitrator's view, clear that the protections of employees not to be laid off or to be forced to take the spare board, with the right to displace into a designated bilingual position, extends only to those positions which are designated bilingual under the terms of Appendix 6. The Assistant Service Coordinator is not such a position. Its status as a bilingual position predates and stands apart from the terms of Appendix 6.

The Arbitrator is satisfied that as regards the position of Assistant Service Coordinator, there has been no violation of Appendix 6 of the Collective Agreement either in the failure to assign the employees concerned to that position or to provide training for them to do so. For the reasons related in CROA 2052, the training contemplated in Appendix 6 is in relation to additional designated bilingual positions as contemplated within that document, and not to the position of Assistant Service Coordinator.

For the foregoing reasons the grievance must be dismissed.

February 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR