CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2156

Heard at Montreal, Tuesday, 11 June 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

An alleged violation of Article 16.3 of Collective Agreement No. 1.

JOINT STATEMENT OF ISSUE:

In April 1990, the Corporation conducted a ReserVIA training course for employees on Employment Security status in Moncton pursuant to Article C of the Special Agreement.

The Brotherhood contends that the Corporation has violated Article 16.3 of Collective Agreement No. 1 since the Corporation did not post, for a period of not less than 14 calendar days, notice of the training opportunity for all employees.

The Brotherhood has requested that all senior employees who are adversely affected on their present positions be granted the right to displace onto ReserVIA-related positions without loss of wages or benefits.

The Corporation rejected the grievance. The Corporation contends that the training in question was provided in accordance with Article C of the Special Agreement and not under Article 16.3 of Collective Agreement No. 1, and therefore, there was no violation of Article 16.3.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. McGRATH	(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock	-- Senior Officer, Labour Relations, Montreal
R. Wesley	-- Senior Negotiator & Advisor, Labour Relations, Montreal
D. Fisher	-- Senior Officer, Labour Relations, Montreal
J. Kish	-- Senior Advisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

G. T. Murray	-- Regional Vice-President, Moncton
A. Cerrilli	-- Regional Vice-President, Winnipeg
R. Dennis	-- Representative, Moncton
K. Sing	-- Representative, Halifax

AWARD OF THE ARBITRATOR

The Brotherhood's claim is based on the provisions of article 16.3 which are as follows:

16.3 The Corporation shall have training courses which shall be sufficient to allow the employees opportunities to upgrade their knowledge and skills. When training is offered, notices shall be posted for all employees covered under this agreement for a period of not less than 14 calendar days. The notice shall contain all pertinent information, such as type of course, hours, duration and location of courses. Applications shall be considered in seniority order. For the purposes of an employee being absent the provisions of Article 12.15 will apply provided that the training course has not yet commenced. Time spent in training shall be considered for all intents and purposes as time worked. Employees presently in the service of the Corporation will be considered for training before a person not already in the employ of the Corporation, unless otherwise mutually arranged. Those employees successfully completing the training for a given position will thereafter be considered qualified for that position, and may be expected to fill vacancies in that classification as mutually arranged.

The material establishes, beyond controversy, that the Corporation's Atlantic Region conducted a training course in ReserVIA procedures for employees in May of 1990. The course was not posted within the terms of article 16.3, the Corporation asserting that it was acting under the separate provisions of article C of the Special Agreement of November 19, 1989 negotiated in relation to substantial work reduction implemented on January 15, 1990. Article C of the Special Agreement provides, in part, as follows:

C.1 An affected employee who:
(i) has been laid off or who has been advised that he may be laid off and who is, or will be, unable to hold other work on the railway because of lack of qualifications; or
(ii) is required to relocate; or
(iii) is required to suffer a substantial reduction in his rate of pay;

will be considered for training for another position within or without his seniority group, providing he has the suitability and adaptability to perform the duties of that position and provided he has indicated a willingness to work in the job for which he may be trained whenever vacancies exist.

C.2 Such training will be:

(i) at training classes conducted by qualified railway personnel;
(ii) at classes conducted by an approved training agency.

C.3 The type of training for which an employee may apply must:
(i) qualify the employee for a recognized railway position;
(ii) qualify the employee for employment on the railway on completion of the training period in a position for which the employee has been trained; or
(iii) in the case of employees with 20 or more years of cumulative compensated service, or on Employment Security, include the possibility of qualifying the employees for employment within or without the railway industry; or
(iv) in the case of an employee on Employment Security, i.e., 4 years' service, qualify the employee for employment within or without the railway industry, provided the employee resigns upon obtaining employment outside the Corporation upon completion of the training.

...

C.7 Upon request, the subject of training of an affected employee or groups of affected employees under any of the above provisions shall be discussed by the Regional Vice-President and the appropriate officer of the Corporation either prior to or at the time of layoff. In addition, such discussion may include representatives of Employment and Immigration Canada, in cases of training for outside employment. All payments under this agreement are to be reduced in whole or in part in each case by the amount payable for the same purpose under a Government Assistance Program.

C.8 The Corporation, where necessary and after discussion with the Brotherhood, will provide classes (after work or as arranged) to prepare present employees for upgrading, adaptation to technological change and anticipated new types of employment in the Corporation. The cost of such training will be borne by the Corporation.

The position of the Corporation is that the training course conducted at Moncton in May of 1990 was assigned to four employees who were either on layoff or on employment security status and that it was within the prerogatives of the Corporation to place those individuals in the training program in accordance with article C of the Special Agreement, rather than posting the training opportunities for general bid by seniority under the terms of the article 16.3 of the collective agreement. Its representative submits that at the time of the general bid relating to the reduction in services of January 15, 1990 the Brotherhood and the Corporation agreed to utilize article C for earmarking employees for training in respect of ReserVIA positions on which they bid successfully, and for which they were not yet qualified. It appears that a training course was conducted in the latter part of January and early February pursuant to that arrangement. In the Corporation's submission the understanding continued to operate through the second course made available in May. It is at this point that the Brotherhood parts company with the Corporation. It submits that there was no express or implied agreement with regard to the selection of candidates for ReserVIA training in May, save through

the normal procedures contemplated under article 16.3 of the collective agreement. Lastly, it appears that in October of 1990 the Corporation conducted another ReserVIA training course. It was posted in accordance with article 16.3, although the postings were made only in Moncton and Halifax, and not at all locations on the Atlantic Region.

The Arbitrator has difficulty with the position advanced by the Corporation. The Special Agreement was made in contemplation of minimizing the adverse impacts on employees affected by the reduction in services implemented on January 15, 1990. It would appear that it provides the framework for the Corporation and the Brotherhood to discuss and implement training opportunities for employees who were then adversely affected, and would go so far as to allow the parties to make specific arrangements in that regard notwithstanding the more general provisions of article 16.3 of the collective agreement. Article C of the Special Agreement also goes beyond the purview of article 16.3 of the collective agreement to the extent that it provides for training in trades or skills relating to employment outside the service of the Corporation. In the Arbitrator's view great care must be taken before finding that the parties, by concluding article C of the Special Agreement, intended to assign to the Corporation an indefinite and ongoing discretion to ignore the provisions of article 16.3 in making subsequent training opportunities available to employees who are laid off or who are on employment security status.

From a purposive point of view the Corporation's position is doubtful. Employees who were forced to assume employment security status, or laid off status, as of January 15, 1990 are those whose seniority was not sufficient to protect available positions within the bargaining unit as at that date. It is common ground that ReserVIA jobs are among the most highly paid. Should the Corporation's interpretation prevail, junior employees would have prior access to ReserVIA training and subsequent vacancies in ReserVIA positions. In the result, senior employees who were able to protect other lower paid positions would be deprived of the opportunity to gain access to the training and, ultimately, to the higher paid positions.

The position advanced by the Brotherhood is not prejudicial to the right of the Corporation to bring employees on employment security status and on laid off status on stream into part time or full time positions. Presumably, as senior employees in lower paid jobs gravitate to the ReserVIA training and, eventually, to vacancies in ReserVIA positions, they will leave behind vacancies that can then be backfilled by employees on employment security status or on layoff. In considering the dispute, the Arbitrator can see nothing in the scheme of the Special Agreement, read together with the collective agreement, to suggest that the parties rejected that approach and agreed to effectively amend article 16.3 by giving first access to all training and ReserVIA jobs to more junior employees on employment security or laid off status. Absent clear and unequivocal language to the contrary, I cannot accept that a position so contrary to the precepts of seniority and job security was intended.

As noted above, article C of the Special Agreement gives to the Corporation scope to reach agreement with the Brotherhood to make special provision for employees who were adversely impacted by the reduction in services. That appears to be what occurred in respect of the initial training program conducted in late January and early February of 1990. There is, however, no evidence of any subsequent discussion or agreement between the parties that would allow the Corporation to bypass indefinitely the general and mandatory provisions of article 16.3 of the collective agreement.

Absent any evidence to the contrary, the Arbitrator accepts the representation of the Brotherhood's representative that in the past bulletins in respect of training opportunities have, according to established practice, been posted on a regional basis for the purposes of article 16.3. The Corporation submits that employees who did not pursue the opportunity of ReserVIA training posted in October of 1990 should be considered to have failed to mitigate their losses, at least as of that date. The Arbitrator accepts the validity of that submission, with one qualification. As the evidence discloses, the notice of training was posted in Halifax and Moncton, but was not brought to the attention of employees at other locations on the Atlantic Region. In the circumstances, senior employees at those other locations who were denied the opportunity to have access to the training positions made available in May of 1990 should not be so limited in their claim unless it can be shown that they had actual knowledge of the posting. As the Brotherhood's representative acknowledges, however, the claim of any senior employee must ultimately depend on his or her demonstrating the ability to complete the training course successfully.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Corporation violated article 16.3 by failing to post notices for all employees on the Atlantic Region in respect of the ReserVIA training offered in May of 1990. The Corporation is therefore directed to comply forthwith with the requirements of article 16.3 by posting a ReserVIA training course to the attention of all employees within the Atlantic Region, within a reasonable time, in conformity with the requirements of article 16.3. To the extent that any employees can demonstrate that they were senior to the employees assigned to the training course in May of 1990, that they completed the training course successfully, and were accordingly deprived of the opportunity in May of 1990 to become eligible for a ReserVIA position, they shall be compensated for any wages and benefits lost in consequence. For the reasons related above, should any of the senior employees so identified be from Halifax or Moncton, or should they be from any other location in circumstances where it is established that they had actual knowledge of the training posting of October of 1990, and that they did not avail themselves of that opportunity, the compensation payable to them shall be reduced accordingly. For the purposes of clarity, in assessing the number and identity of employees adversely affected by the Corporation's violation of article 16.3 the parties shall base their calculations on the number of positions which were in fact made available in May of 1990, assuming that senior employees willing to undertake the training and able to successfully complete it are identified.

The Arbitrator retains jurisdiction in respect of the interpretation and implementation of this award for the purposes of remedy.

June 14, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR