

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2330

Heard at Montreal, Thursday 11 February 1993

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The awarding of early retirement opportunities to locomotive engineers home terminalled at Winnipeg.

BROTHERHOOD'S STATEMENT OF ISSUE:

As a consequence of negotiations pursuant to Article 89 of Collective Agreement 1.2, relative to the crewing changes to Trains 1 and 2 effective April 26, 1992, two early retirement opportunities were afforded locomotive engineers at Winnipeg.

The two early retirement opportunities were awarded to Messrs. M.E. Olijnyk and G.S. Town.

The Brotherhood claims that the Corporation rescinded the early retirement opportunity awarded to Mr. Town and subsequently awarded it to Mr. H.A. Burgess. That Messrs. M.E. Olijnyk and G.S. Town were the proper recipients of the early retirement opportunities provided by the terms of Article 89 of Collective Agreement 1.2 relative to the crewing changes to Trains 1 and 2 effective April 26, 1992.

The Corporation denies a mistake was made and that, in any event, only two retirement opportunities were made available.

FOR THE BROTHERHOOD:

(SGD.) W. A. WRIGHT

GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

K. W. Taylor - Senior Negotiator & Negotiator, Labour Relations, Montreal

C. Rouleau - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

W. A. Wright - General Chairman, Saskatoon

G. Hallé - National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Having regard to the evidence filed, the Arbitrator is satisfied that the grievance must be allowed. In accordance with the memorandum of agreement negotiated between the parties, dated April 24, 1992, it was agreed that two retirement opportunities would be offered to locomotive engineers at Winnipeg, effective at the change of timetable scheduled for April 26, 1992. A bulletin issued accordingly and, as of April 26, 1992 Locomotive Engineer Town was one of the two senior applicants for the early retirement opportunities.

The Arbitrator cannot find, on the balance of probabilities, that any extension of the deadline for the bidding on those opportunities was agreed to by the Brotherhood. That conclusion is based, in part, on the representations of the parties at the hearing, and on the undisputed fact that no such information was provided either to the Corporation's Crew Management Centre, which was responsible for receiving and administering the bids, or to the employees to whom the original bulletin was addressed. In the circumstances I must conclude that Mr. Town brought himself within the conditions of the memorandum of agreement established by the parties, and is entitled to claim an early retirement opportunity accordingly.

Moreover, nothing in this award should be taken as approval of the suggestion in the Corporation's brief that the success of the grievance brought on behalf of Mr. Town must somehow result in the loss of the early retirement opportunity

awarded to Mr. Burgess. It is common ground that Mr. Burgess did not have notice of these proceedings, and any issue with respect to his rights must be determined on its own merits.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the Corporation offer, forthwith, to Mr. Town the early retirement opportunity of which he was deprived effective April 26, 1992. Should there be any disagreement, the issue of compensation may be spoken to.

February 12, 1993 (Sgd.) MICHEL G. PICHER

ARBITRATOR