CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2344
Heard at Montreal, Thursday, 11 march 1993
concerning
VIA RAIL CANADA INC.
and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
DISPUTE:
The appropriate wage rate to be paid Mr. Paul Young.
JOINT STATEMENT OF ISSUE:
On August 1, 1989, Mr. Paul Young voluntarily resigned his position of Senior Counter Sales Agent and ceased to be an employee of the Corporation effective August 11, 1989.
All pension contributions and vacation pay was paid to Mr. Young and his name was removed from the seniority list.
On July 31, 1991, Mr. Young was hired as a new employee.
The Brotherhood contends that Mr. Young is entitled to the top rate because he had previous "service" with the Corporation and, therefore, had in excess of 157 weeks of service with the Corporation. The Brotherhood alleges that the Corporation has violated Article 23, was well as Appendix A of Collective Agreement No. 1.
The Corporation disagrees. The Corporation contends that Mr. Young's service was zero and began to accumulate starting on his most recent hire date of July 3, 1991. The Corporation does not believe there is any article in Collective Agreement No. 1 that provides a mechanism to recognize any prior service with the Corporation in these circumstances.
FOR THE BROTHERHOOD:
FOR THE CORPORATION:
(SGD.) T. N. STOL
(SGD.) D. S. FISHER
NATIONAL VICE-PRESIDENT
for: DEPARTMENT DIRECTOR, LABOUR RELATIONS
There appeared on behalf of the Corporation:
D. S. Fisher
Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock
Senior Labour Relations Officer, Montreal
J. R. Kish
Senior Advisor, Labour Relations, Montreal
And on behalf of the Brotherhood:
T. N. Stol
National Vice-President, Ottawa
P. Young
Grievor

AWARD OF THE ARBITRATOR

The grievance turns upon the application of article 23.4 of the collective agreement which provides as follows:

QQINDENT 23.4

QQINDENT An employee filling the position of Counter Sales Agent I, Telephone Sales Agent, Tour Sales Agent, Rate & Refund Clerk, Special Traffic Clerk or Chief Passenger Clerk, who has had less than 157 weeks service with the Corporation, will be paid in accordance with Appendix A.

The Brotherhood submits that in computing the "service" of Mr. Young for the purposes of article 23.4, the eighteen years of service which he rendered to the Corporation, and its predecessor CN, are to be counted. In other words, it submits that upon his rehire he became an employee with 157 weeks' service, with full entitlement to the top rate for his classification as provided in Appendix A of the collective agreement. The Corporation submits that "service" within the meaning of article 23.4 must be taken to mean continuous and uninterrupted service.

The collective agreement makes provision in a number of articles for continuous employment. For example, article 9.2 provides that employees must have "maintained a continuous employment relationship for at least three years and [have] completed at least 750 days of accumulated compensated service, ..." Similarly, the provision governing weekly indemnity, maternity benefits and life insurance plans speaks in terms of an employee having maintained "... a continuous employment relationship for at least sixty (60) calendars days with the Corporation ...". Under article 3.2(iii) of the Supplemental Agreement weekly layoff benefits or severance payments are made available to "employees with two or more years of continuous employment ...". Further, the pension rules speak in terms of the service of an employee, and the definition section provides as follows:

QQINDENT "Service" means continuous employment as an employee without a break of any kind except as provided for in the Corporation regulations, and for a CN employee and a CP employee service as defined in the 1959 Pension Plan and the CP Pension Plan respectively shall be deemed to be service with the Corporation.

There is, of course, a difference between the concept of employment and the concept of service. Absent language to the contrary in a collective agreement, it may be argued that an employee who is laid off, with rights of recall, is an employee although he or she may not be in service. That distinction, however, is of little utility in resolving the dispute at hand. Both the employment and the service of Mr. Young were interrupted between August 11, 1989 and July 31, 1991. The issue becomes whether the concept of service provided for in article 23.4 of the collective agreement must be construed as continuous service. As noted above, where the parties intended to impart the concept of continuity within the terms of their agreement, they have done so expressly in a number of circumstances, albeit in relation to employment rather than service. Moreover, a specific definition of "service" appears in the pension rules. No such definition or distinction is made with respect to "service" as it appears in article 23 of the collective agreement.

From a purposive point of view, the Brotherhood's position is more persuasive. Article 23 of the collective agreement provides for the graduated incremental payment of employees based on the length of their service. There is within that formula, as within the formula found in Appendix A of the collective agreement, an implicit recognition that the wages of an employee are to be commensurate with his or her experience in the service of the Corporation. Clearly that purpose is not offended by the application, in the case at hand, of article 23.4 in the manner argued by the Brotherhood. Indeed, it is common ground that because of Mr. Young's eighteen years of prior experience in counter sales supervisors have called upon him, on a number of occasions, to trouble shoot problems being experienced by other employees. There is as well no suggestion in the evidence before me that Mr. Young required any substantial training after the relatively short hiatus in his employment with the Corporation.

Moreover, the history of the article and appendix would support the Brotherhood's position. It is common ground that under the collective agreement prior to the one preceding the current agreement the wage scale in Appendix A was framed in terms of "apprenticeship rates". The Corporation's representative candidly acknowledges that if the language of the provision were the same today, the grievance must succeed. In my view, while the title or language has changed, there is no indication before me that the purpose or intention has changed. The collective agreement reflects an understanding that employees are to be paid in relation to their experience. On balance, therefore, I must sustain the claim advanced by the Brotherhood.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the grievor be compensated in accordance with his claim, commencing September 1, 1991, which is sixty calendar days prior to the submission of the original grievance.

March 12, 1993

(Sgd.) MICHEL G. PICHER

ARBITRATOR