CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2569
Heard in Montreal, Wednesday, 11 January 1995
concerning
VIA Rail Canada Inc.
and
United Transportation Union
DISPUTE:

Claim that Mr. Brideau was entitled to work until March 31st, 1994.

JOINT STATEMENT OF ISSUE:

At the fall change of time of 1993, Mr. Brideau was assigned on a non-essential position at Moncton. He submitted an application dated September 20, 1993 for an early retirement opportunity offered in a VIA bulletin dated September 15, 1993.

The application form also included a "note" from Mr. Brideau which read as follows:

If I am the successful applicant, it is my wish to work to "... the expiration of the change of time table period (April 23, 1994) during which it was designated as to be eliminated ..." (Item J of the memorandum of agreement signed November 28, 1989).

Mr. Brideau retired on December 31st, 1993.

It is the Union's position that Mr. Brideau should have been permitted to work until March 31st, 1994.

It is the Corporation's position that the non-essential brakeman positions were abolished effective December 31st, 1993 and Mr. Brideau could have exercised his seniority at that time and taken the retirement opportunity at a later date if he so desired.

FOR THE UNION: FOR THE Corporation:
(SGD.) R. Lebel (SGD.) K. Taylor
General Chairman for: Department Director, Labour Relations

There appeared on behalf of the Corporation:
D. A. Watson– Senior Labour Relations Officer, Montreal
K. W. Taylor– Senior Advisor and Negotiator, Labour Relations, Montreal

And on behalf of the Union:
R. LeBel – General Chairman
J. W. Murphy– Observer
P. Brideau – Grievor

AWARD OF THE ARBITRATOR

It is common ground that Mr. Brideau elected to assume a non-essential position at Moncton at the fall change of time of 1993. He did so to become eligible for an early retirement opportunity available under a memorandum of agreement between the Corporation and the Union in respect of crew consists, which became incorporated into the collective agreement as Addendum No. 7. That addendum provides, in part, as follows:

Non-essential positions shall remain in effect subject to the following:

(a) The period between January 1, 1990 and December 31, 1993 shall be known as the Implementation Period and non-essential positions will be eliminated during such period.

(b) A "Special Change" Bulletin shall be posted to take effect January 1, 1990, indicating the non-essential positions in each terminal.

(c) All non-essential positions in each terminal will be designated as "to be eliminated" proportionally, over the nine bulletins taking effect between January 1, 1990 and December 31, 1993. ...

It is common ground that the intention of the parties in fashioning the terms of Addendum No. 7 was to provide a certain number of retirement opportunities to promote the elimination of non-essential positions by means of attrition. It was also understood that all non-essential positions would be abolished by December 31, 1993.

On September 20, 1993 Mr. Brideau submitted an early retirement application which included the note reflected in the joint statement of issue, indicating his wish to work beyond December 31, 1993, to the conclusion of the change of time period, at which point he would commence his retirement. It does not appear disputed that to work that period would have provided Mr. Brideau enhanced earnings for the purposes of calculating his retirement pension.

On behalf of the grievor the Union argues that he was left in some uncertainty by the alleged failure of the Corporation to respond to his request to work beyond the December 31, 1993 deadline. It submits that at least one Corporation officer made comments which caused Mr. Brideau to conclude that he would be permitted to work through April of 1994, and that he was given a similar interpretation of the operation of Addendum No. 7 by Union General Chairperson B. Leclerc.

In the Arbitrator's view, whatever may have been said to the grievor by Mr. Leclerc at the time the memorandum of agreement was negotiated, or by Mr. J. Lalonde, a Corporation officer, in October of 1991, as to their understanding of the Addendum, it appears that subsequently, under the administration of Mr. K. Taylor, the Corporation communicated clearly to the Union that no exemptions would be made to the rule that all non-essential brakemen positions would be eliminated effective December 31, 1993, and that on that basis it refused to extend the period of employment sought by Mr. Brideau. Indeed, the unchallenged representation of the Corporation is that on several occasions the grievor was told by management staff in the crew office that, regardless of the "wish" he had appended to his application, his position would be abolished effective December 31, 1993.

In the circumstances the Arbitrator cannot see how Mr. Brideau can now rely on an apparent misinterpretation by either Mr. Leclerc or Mr. Lalonde as to the length of employability of an individual electing to assume a non-essential position during the change of time period leading up to December 31, 1993. In this regard it appears to the Arbitrator that the memorandum of agreement is clear and unequivocal in its terms. As indicated in paragraph 3(c) of Addendum No. 7, there can be no doubt that the parties agreed that all non-essential positions would terminate effective December 31, 1993. In the face of such clear and categorical language, there is no basis upon which Mr. Brideau could purport to carve out an exception for himself by appending a note to his application, absent a clear and unequivocal agreement on the part of the Corporation and the Union to such an

extraordinary departure from the terms of the memorandum of agreement. Plainly, there is no evidence of any such agreement before the Arbitrator. On the contrary, the representations of the Corporation are to the effect that the Union and Mr. Brideau were categorically informed that he would not be entitled to extend his employment beyond December 31, 1993. There is, therefore, no basis in the contractual language before me, nor any other principle of which I am aware, which can justify the claim being made by Mr. Brideau. Whatever he may have wished, it was incumbent upon him to make his election in the fullest knowledge of his rights, and to live with the consequences. Having opted to gain the special benefit of the retirement package being offered, he cannot now claim advantages beyond the terms of the memorandum of agreement.

For all of the foregoing reasons the grievance must be dismissed.

13 January 1995 _____

MICHEL G. PICHER
ARBITRATOR