CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2657

Heard in Montreal, Tuesday, 10 October 1995

concerning

VIA Rail Canada Inc.

and

United Transportation Union

DISPUTE:

The reduction of Mr. Vachon's incumbency in pay periods 16/17, 1993, due to his failure to be available when called for an assignment.

JOINT STATEMENT OF ISSUE:

Mr. Vachon was assigned to the yard spareboard at Montreal.

On August 4, 1994, a vacancy for Trains 31/36, a road assignment, arose and the road spareboard was exhausted. The Corporation then called the first employee out off the yard spareboard, Mr. Vachon, in accordance with article 40.7.

It is the Union's position that the Corporation violated articles 42.22 and 48.4, when it failed to completely exhaust using employees on other regular assignments for the vacancy on Trains 31/36.

It is further the Union's position that, although the Corporation may canvass yard service employees for road service assignments such yard service employees are not obligated under the collective agreement to accept calls for road service.

It is the Corporation's position that article 40.7 was properly applied and that Mr. Vachon's incumbency was appropriately reduced when he was not available.

FOR THE UNION: FOR THE Corporation:

(SGD.) G. F. Binsfeld (SGD.) K. Taylor

for: General Chairman for: Department director, Labour Relations & Human Resources Services

There appeared on behalf of the Corporation:

K. Taylor – Senior Advisor & Negotiator, Labour Relations, Montreal

J. Ouellet –

And on behalf of the Union:

G. F. Binsfeld – Secretary/Treasurer, GCA, Fort Erie

G Bird – Vice-General Chairperson, Montreal

AWARD OF THE ARBITRATOR

The Arbitrator cannot find a violation of article 42.22 or of article 48.4 of the collective agreement in the facts disclosed in the case at hand. As reflected in the Joint Statement of Issue, Mr. Vachon was called for service from the yard spareboard, for a road assignment when the road spareboard was exhausted and he stood first out on the yard spareboard. Article 42.22 of the collective agreement makes provision for assistant conductors/brakemen being held to perform duties of that classification and yard helpers being held to perform the duties of yard helpers, coupled with the guarantee that they not be paid less than earnings which they would have had on their regular assignment. That provision does not speak to the ability of the Corporation to call employees from the yard spareboard into road service, and has no application to the facts at hand.

Article 48.4 of the collective agreement describes the entitlement of employees in road service and yard service to various forms of relief and extra work. Again, it makes no

provision for limiting the ability of the Corporation to call employees from a yard spareboard into road service, or from a road spareboard into yard service.

The Corporation relies on the application of article 40.7 of the collective agreement which provides as follows:

INDENT 40.7 At a location where a separate spare board for yard service is maintained, qualified employees from either the yard foremen's or yard helper's spare board may be used in road service when there are no road service employees available and qualified employees from the road spare board may be used in yard service when there are no yard service employees available.

As can be seen from the foregoing, the Corporation has the ability to utilize qualified employees from the yard helpers' spare board in road service "... when there are no road service employees available". The thrust of the grievance, as the Union's representative puts it, is that the Corporation did not fully canvass the availability of qualified road service employees before reverting to the yard helpers' spareboard. The Union submits that the Corporation should have first called all employees on the emergency service list and, in addition, if necessary, then canvass all other road service employees not on duty and presumably not precluded by any mandatory rest provisions.

The Corporation submits that the position of the Union is unworkable, and beyond the contemplation of the parties to a collective agreement governing passenger service, which involves fixed departure times and a limited ability to canvass the availability of off-duty employees who, in some locations, may number as many as 100. It submits that the requirements of article 40.7 are properly met when the Corporation, faced with an exhausted road spare list, canvasses employees who have applied for emergency work. It submits that, even though there is no such requirement in the collective agreement, that must be seen as the limit of its obligation to determine whether other road employees are available. In its view, when the road spare board is exhausted and no emergency list employees are available, the Corporation is then entitled, as contemplated by article 40.7, to require the employee next out on the yard spareboard to work in road service. The Corporation notes, in passing, that the circumstance giving rise to this grievance could not now recur, as the most recent renewal of the collective agreement has merged yard and road employees into a single spareboard.

While this case is not without some difficulty, the Arbitrator is persuaded that, on balance, the interpretation advanced by the Corporation is to be preferred. Whatever may be the practice in respect of the calling of employees in freight service in other railways, the instant collective agreement must be construed within the context of passenger service in relation to which it was intended to operate. It does not appear disputed that the Corporation has developed a list of employees available for call on an emergency basis. As the Corporation notes, the calling procedures which were utilized in respect of Mr. Vachon in the case at hand were introduced in July of 1992, following consultation with the Union's local chairman. It is not disputed that Mr. Vachon was called in compliance with that procedure, at step 7 of the calling sequence, being the first assistant conductor available from the yard spareboard. Before turning to

Mr. Vachon the Corporation unsuccessfully canvassed the road spareboard, the emergency list, conductors working from the road spareboard, conductors off for miles and conductors working from the emergency list. In these circumstances I am satisfied that it complied with the spirit and intention of article 40.7, and that it was entitled to revert to calling Mr. Vachon from the yard spare list, as there were no road service employees available.

In coming to this finding the Arbitrator has considered and must reject the submission of the Union with respect to the application of article 76.4 of the collective agreement. It precludes local officers from making agreements with the Corporation which are inconsistent with the accepted interpretation of the collective agreement. It is arguable that practices under a prior freight collective agreement cannot be asserted, as a general matter, for the purposes of interpreting the collective agreement more recently negotiated for the specific purposes of passenger service. More importantly, however, I can see nothing inconsistent in the local calling procedures negotiated with the Union's local officers and the general provisions of article 40.7. In these circumstances there is nothing inconsistent with the provisions of article 76.4 of the collective agreement.

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

October 13, 1995 (signed) MICHEL G. PICHER

ARBITRATOR