CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2806

Heard in Montreal, Wednesday, 11 December 1996

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Interpretation of article 12.1 NOTE: (a) of collective agreement 12 and article H of Justice Mackenzie's award.

EX PARTE STATEMENT OF ISSUE:

On December 19, 1995, the Union advised the Corporation that under the provisions of the Mackenzie Award article H and the provisions of article 12 of agreement 12, it was the Union's interpretation that the VIA 1 coach came under the direction and responsibility of the conductor and therefore was a working coach. The union requested that the Corporation include the VIA 1 coach when determining the minimum crew size.

The Corporation responded to the Union on January 16, 1996, disagreeing with the Union's interpretation.

FOR THE UNION:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Officer, Labour Contracts, Montreal
J. C. Grenier	– Labour Relations Officer (ret'd), Montreal
B. E. Woods	– Director, Labour Relations, Montreal

And on behalf of the Union:

G. Bird	– Vice-General Chairman, Montreal
R. Skilton	– Local Chairman,

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that from the inception of the VIA 1 coach, in 1984, because of the burden handled by the on-board service staff with respect to collecting transportation, entraining and detraining passengers, handling baggage and providing meal and beverage service, the VIA 1 coach has not been treated as a working coach for the purposes of assigning crew consists of conductors and assistant conductors. Moreover, it appears to be common ground that the issue of the definition of a "working coach" was not one which was put into dispute before Mr. Justice Mackenzie for the purposes of his interest arbitration award. In the result, although article E of the award made certain adjustments in respect of consists of crews, it did not bring any new definition to bear with respect to the long established concept of "working coaches". Further, although article H of the award provides a "scope rule" with respect to the general duties of conductors and assistant conductors, there is again nothing within the language of those rules which generally departs from the pre-existing Corporation directives with respect to the duties and responsibilities of conductors and assistant conductors. Most significantly, there is nothing within that rule which would support the argument of the Union that there has been a change in the definition of a working coach, so that the VIA 1 coach, which provides club car service, is now to be considered as a working coach for the purposes of paragraph E of the Mackenzie award.

Specifically, article 12 of the collective agreement provides the following definition of a working coach, as it appears in the NOTE to article 12.1, which governs consists of crews:

> **NOTE:** In the application of this article 12.1:
>
> **(a)** A working coach is defined as an in-service passenger car which comes under the responsibility of the conductor for the collection of transportation, limited to the following passenger cars or to other passenger equipment, which is designated or placed in service on a tour of duty basis to perform the function of:
>
> **(i)** day coaches;
> **(ii)** day-nighters;
> **(iii)** café-coach lounge cars; and/or
> **(iv)** snack coaches

It is clear to the Arbitrator that the VIA 1 coach cannot qualify as any of the four enumerated types of coaches defined within the collective agreement as working coaches. Nor can I find that the occasional moving of passengers from those coaches into VIA 1 coaches, on occasions of overbooking, can be said to change the essential nature of the VIA 1 coach. Adjustments of that kind have, as indicated by the Corporation, apparently been made for many years without a claim on the part of the Union that the VIA 1 coach becomes a working coach by reason of transfer or upgrading of passengers into VIA 1 from other classes of coaches, for whatever reason.

The definition of working coaches for the purposes of establishing crew consists is obviously a matter of cardinal importance to the parties, as it is a substantial cost item in the administration of their collective agreement, and a significant provision for determining the volume of work available to the Union's members. In the Arbitrator's view a significant or material change in an issue so crucial must be the subject of clearly articulated bargaining between the parties, with a commensurate change in the language of their agreement by mutual consent, or alternatively be implemented by clear and unequivocal language handed down by a board of interest arbitration. Neither of those alternatives is reflected in the material before me. On the contrary, it is obvious that the parties did not themselves negotiate any change in the status of the VIA 1 coach, nor did Mr. Justice Mackenzie make any alteration in respect of the designation of working coaches. That is plainly reflected in paragraph E of his award, which makes no material change in that regard to article 12 of the collective agreement, including the NOTE which provides a clear and unchanged definition of a working coach.

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

December 19, 1996

(signed) MICHEL G. PICHER
ARBITRATOR