CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3009

Heard in Montreal, Wednesday, 9 December 1998

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The Corporation's refusal to honour a signed agreement.

EX PARTE STATEMENT OF ISSUE:

During the month of September 1997, the results of the Section 18 vote at VIA Rail were **known and** it was clear that the Brotherhood of Locomotive Engineers would be the bargaining agent for running trades employees at VIA Rail.

In October of 1997, prior to the certification order being issued, the Corporation entered into an agreement with the UTU Vice-General Chairperson in Homepayne.

The agreement referred to was in relation to "held away time" at the away-from-home terminal and became necessary as a result of a major change in operations which severely extended the held away time for running trades employees. The agreement signed for the Conductors/Assistant Conductors was signed by both parties.

The Corporation has refused to honour the provisions of the agreement as signed and agreed for the Conductors and Assistant/Conductors.

It is the Brotherhood's contention that the Corporation did not negotiate with the party in a genuine manner and has refused to honour the agreement.

Grievances were filed seeking payment. The Corporation did not respond.

FOR THE BROTHERHOOD:
(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN
There appeared on behalf of the Corporation:

E. J. Houlihan - Senior Manager, Labour Relations, Montreal
B. E. Woods - Director, Human Resources and Labour Relations, Montreal
J. C. Grenier - Consultant
J. N. Morello - Legal Counsel, Montreal
And on behalf of the Brotherhood:
D. Ellickson - Counsel, Toronto
J. R. Tofflemire - General Chairman, Oakville

AWARD OF THE ARBITRATOR

By this grievance the Brotherhood seeks the enforcement of a local agreement made between a Local Chairperson of the predecessor union, the United Transportation Union (UTU) and the Corporation's then Manager of Customer Services at Winnipeg, Mr. D.J. Patterson on October 27, 1997. It is common ground that at the time of **the local agreement the** UTU was in the last days of its right to represent conductors and assistant conductors employed by the Corporation. A representation vote conducted by the Canada Labour Relations Board determined on September 25, 1997 that the BLE was successful in emerging with the bargaining rights for the employees concerned, following an application made by the Corporation under section 18 of the **Canada Labour Code.** The local agreement was thus negotiated during the period pending the finalizing of the board certificate, which was issued on November 3, 1997, effective October 31, 1997.

The local agreement would provide to conductors and assistant conductors home terminalled at Homepayne a considerably more generous formula for being required to lay over for extended periods of time at Sioux Lookout. It does not appear disputed that the advantages so negotiated exceed those available to locomotive engineers operating in the same crews. It is common ground that an earlier agreement, signed by the UTU's General Chairperson and the Corporation's Director of Labour Relations, as reflected in a letter dated March 17, 1992 also provided protections for employees compelled to layover at Sioux Lookout, albeit on a lower scale.

The Corporation never implemented the "new" local agreement. Its representative submits that it was in fact negotiated in dubious circumstances by a bargaining agent whose status was questionable, given the known outcome of the representation vote conducted by the Canada Labour Relations Board. The Corporation questions whether it was done in good faith. The Corporation stresses that, predictably, the BLE soon demanded that the higher benefit be made payable equally to locomotive engineers. The Corporation's position has consistently been that the purported local agreement is a nullity. It continues to honour the earlier agreement, as well as a similar agreement negotiated with the BLE, whereby all crew members are treated equally in respect of compensation for laying over at Sioux Lookout.

Upon a review of the positions of the parties the Arbitrator is

satisfied that the Corporation's position must be sustained. The record confirms that the earlier layover agreement concerning Sioux Lookout was negotiated with the Director of Labour Relations for the Corporation, which is to say at the highest level, at the Corporation's national headquarters. It is not disputed that that agreement would have been enforceable as part of the collective agreement. The issue then becomes whether the subsequent "new" local agreement made by the former bargaining agent in the dying days of its mandate, and entirely negotiated with the Corporation's Manager of Customer Services in Winnipeg without the knowledge, approval or signature of the Corporation's Director of Labour Relations, can be said to be a proper amendment of the collective agreement documents. In this regard article 76 of the collective agreement is controlling. Titled "Application and Interpretation of Agreement" it provides, in part, as follows:

> 76.4 No local arrangements which conflict with the generally accepted interpretation of the provisions of this Collective Agreement will be entered into unless first approved by the General Chairman affected and the proper Officer of the Corporation.

The Arbitrator must sustain the position of the Corporation, which is that the local agreement purportedly negotiated with a relatively minor officer of the Corporation at Winnipeg cannot vary the earlier agreement or otherwise amend the collective agreement, as it was not duly approved by the "proper Officer of the Corporation." In the case at hand it is clear that the arrangement for compensation in respect of extended layovers at Sioux Lookout was an extraordinary measure, initially negotiated at the national level in March of 1992 and executed by Mr. C.C. Muggeridge, then Director of Labour Relations for the Corporation. The instant collective agreement, like other agreements within the industry, reflects the understanding of the parties that in certain circumstances local agreements may be negotiated, but that they are not to be negotiated in terms that are contrary to the provisions of the collective agreement, absent the approval of the appropriate Union and Corporation officers. That is an understandable protection, the terms of which, under another collective agreement between the Canadian National Railway Company and the United Transportation Union, were successfully invoked in this office by the union's general chairman to strike down the terms of a locally negotiated agreement of reinstatement for an individual employee. (See **CROA 2756)** In my view, in the instant case, the Corporation is equally entitled to invoke the provisions of article 76.4 to properly dissociate itself from the agreement negotiated with Mr. Patterson, an individual with neither the authority nor the stature to reverse or amend the terms of the initial local agreement of March 17, 1992, or any other aspect of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

December 14, 1998

MICHEL G. PICHER
ARBITRATOR