CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3082
Heard in Montreal, Wednesday, 12 January 2000
concerning
VIA RAIL CANADA INC.
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE

DISPUTE:

The Corporation's failure to comply with their contractual letter to the Brotherhood dated June 12, 1998, relative to submission of quarterly lump sum payments of $37,400.00 to the Brotherhood for the administration of the collective agreement administration fund and the betterment of labour relations.

EX PARTE STATEMENT OF ISSUE:

On June 12, 1998, the Brotherhood and the Corporation signed a new collective agreement for a duration of three (3) years. On July 1, 1998 the new collective agreement was implemented.

On September 29, 1998 the Brotherhood sent a letter to the Corporation requesting the first installment of the quarterly lump sum payment ($37,400.00) as specified in the Corporation's letter to the Brotherhood dated June 12, 1998. The Corporation did not respond to the Brotherhood's September 29th letter.

On November 2, 1998 the Brotherhood sent the Corporation a second request for the first lump sum quarterly payment. On November 2, 1998 the Corporation sent the Brotherhood a letter which stated in part, as follows:

> You have neglected to advise to whom the installment cheque is to be delivered. With this information we will be pleased to forward the instructions required.

On November 16, 1998 the Brotherhood sent the Corporation the correct name and mailing address as requested in their letter to the Brotherhood dated November 2, 1998.

On November 16, 1998 the Corporation sent the Brotherhood an interpretation of their June 12, 1998 letter to the Brotherhood and also further refused to submit the first lump sum quarterly payment to General Chairman Bradford E. Wood at 2 Dartmouth Road, suite 2 10, Bedford, Nova Scotia, B4A 2K7.

On November 17, 1998 the Brotherhood advised the Corporation that it disagreed with their interpretation of their letter to the Brotherhood dated June 12, 1998.

The Corporation continues to refuse to comply with their letter dated June 12, 1998.

FOR THE BROTHERHOOD:
(SGD.) **B. E. WOOD**
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	-	Sr. Manager, Labour Relations, Montreal
B. E. Woods	-	Director, Human Resources & Labour Relations, Montreal
G. Benn	-	Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

B. E. Wood	-	General Chairman, Halifax

AWARD OF THE ARBITRATOR

This dispute involves the disbursement and distribution of the monies allotted to the Brotherhood in the form of a collective agreement administration fund established by agreement between the parties, as reflected in a letter dated June 12, 1998, the terms of which are incorporated within the collective agreement. The letter in question reads as follows:

> In National Negotiations between the Brotherhood of Locomotive Engineers and the Corporation, a proposal was put forward by the Union for a Collective Agreement Administration Pund.
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> As a result of the proposal and the ensuing discussions, the Corporation has agreed to a lump sum amount of $37,400.00 payable quarterly to the General Chairman of the Brotherhood of Locomotive Engineers for the administration of the collective agreement and betterment of labour relations.

It is common ground that the lump sum payable annually is a single sum of $37,400. Portions of it are to be disbursed on a quarterly basis. Difficulty arose, however, in the initial administration of the provision. Firstly, while the letter speaks to payment being made to the "General Chairman" in the singular, it is common ground that the monies are intended to benefit the members of the Brotherhood separately represented by its three regional general chairmen, Mr. Bradford E. Wood and Mr. John Tofflemire, both, of whom are responsible for segments of Eastern Canada, and Mr. Mike Simpson, General Chairman responsible for Western Canada. While initially grievances filed by the Brotherhood took issue with the amount which was payable, it is now not disputed that the Corporation's obligation is limited to the payment of a total sum of $37,400. yearly, system wide. The instant dispute remains, however, by reason of the fact that the Brotherhood's general chairmen do not themselves appear to be agreed on the method of delivery of the funds, nor on their allotment as among the three jurisdictional regions.

It appears that all three general chairmen separately grieved the issue. While the monies have not yet been paid, the Corporation's representative advises that it has tentatively agreed to settlement of the grievance filed by Mr. Tofflemire by the payment to him of a sum calculated on a rateable percentage of the number of employees he represents. The instant grievance, filed by Mr. Wood, takes issue with that approach, and requests that the Arbitrator direct the monies to be paid to the Brotherhood's national headquarters, for such distribution as may ultimately be established within the Brotherhood itself

The Arbitrator can readily understand the frustration of the Corporation in the face of this matter. The evidence provided by Mr. Bannon Woods, Director of Human Resources and Labour Relations, indicates that it is his belief that during negotiations the Brotherhood's chief national negotiator responded to his question at the bargaining table as to how the monies should be disbursed by commenting that they should most certainly not be sent to the national headquarters, and perhaps it would be best to send the money to Mr. Tofflemire for distribution, as he was responsible for the largest segment of the membership. In fairness, Mr. Woods states that the negotiator now appears to have no recollection of that comment. In the result, there is at best cloudy extrinsic evidence as to what, if anything, was adverted to between the parties with respect to disbursement at the time of the agreement to establish the fund.

It does not appear disputed, as advanced by the Corporation, that the formula which led to the lump sum figure is based upon a calculation of six cents per compensated employee hour across the bargaining unit, based upon a similar provision in the collective agreement of another union. On the whole, I am satisfied that the Corporation has at all times dealt with this issue in good faith, and in a manner consistent with its own belief that the spirit of the fund would suggest that it should be disbursed among the three general chairmen on a rateable basis corresponding to the strength of their respective membership. When reference is had to the language of the letter, however, it is clear that there is nothing on its face which would support the conclusion that the monies involved are to be disbursed among the three general chairmen on any particular basis. Nor does the extrinsic evidence, limited as it is, give any significant guidance in that regard.

In these circumstances the Arbitrator is satisfied that it is appropriate to revert first principles. The Brotherhood is party to a collective agreement in which it has agreed to be recipient of the lump fund of $37,400. It is plainly incumbent upon any party to a collective agreement to exercise good faith to allow the other side to properly perform its obligations. In the instant case I am satisfied that the obligation of the Corporation to disburse the lump sum is conditional upon its receiving reasonable an coherent instructions from the bargaining agent at to the method of its transfer and distribution. In this case those instructions must come from the signatory bargaining agent, which is not the national

headquarters of the Brotherhood, but rather the union in the persons of the three general chairmen who are signatories to the collective agreement, including the terms of the letter of June 12, 1998. In my view the Corporation cannot, in these circumstances, purport to make a settlement with one of the three general chairmen which can be said to be in proper
satisfaction of the obligation contracted with all three Brotherhood officers. Specifically, there is nothing in the language of the letter of June 12, 1998 which would, to the Arbitrator's satisfaction, justify the tentative settlement reached with Mr. Tofflemire, although there may obviously be a compelling argument in support of that formula.

In the instant case I am satisfied that there is an implied obligation upon the bargaining agent, in the person of all three general chairmen, to give a single and uncontradictory instruction to the Corporation as to the method of disbursement of the fund, ironically intended to assist the betterment of labour relations. Until such time as a clear and unequivocal direction, in writing and signed by all three general chairmen, is provided, the Arbitrator cannot find that the Corporation has violated its obligation to disburse the monies of the fund.

In the circumstances the Arbitrator finds no violation of the collective agreement, and directs that the Corporation retain the funds in question, to be transferred to the Brotherhood only upon the providing of a clear and consistent written direction as to its disbursement and distribution, signed by all three general chairmen. Should the Brotherhood continue to fail in its obligation to the point of an arguable abandonment or permanent frustration of contract, the matter may be spoken to.

January 14, 2000

MICHEL G. PICHER
ARBITRATOR