CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2231

Heard at Montreal, Tuesday, 11 February 192

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Scheduling of vacation of Spareboard employees L. Kyle, J.C. LaPointe, J. Ferrand, C. Sim, P. LaRouche, L. Bennett, G. Gunhouse and V. Stankers.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the Corporation violated Article 9.15, 9.17, 9.18 and 9.20 of Collective Agreement No. 2, when the employees in question were not allowed to take their vacation beginning January 1-4, 1990.

The Brotherhood further contends that by not allowing the grievors to take vacation, they were deprived of their entitlement to Employment Security during the implementation of the January 15, 1990 service reductions.

The Corporation maintains that there has been no violation of the Collective Agreement and that it has been standard practice to delay the granting of vacations to unassigned employees until after pay period no. 3. Furthermore, that the scheduling of vacation is the Corporation's prerogative, as the Collective Agreement is not specific as to when a spareboard employee may commence vacation.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. N. STOL	(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Fisher	– Senior Officer, Labour Relations, Montreal
M. St. Jules	– Senior Advisor and Negotiator, Labour Relations, Montreal
C. Pollock	– Senior Officer, Labour Relations, Montreal
J. Kish	– Senior Advisor, Labour Relations, Montreal
C. Thomas	– Officer, Human Resources, Halifax

And on behalf of the Brotherhood:

D. Olshewski	– Regional Vice-President, Winnipeg
T. N. Stol	– National Vice-President, Ottawa
D. Hazlitt	– Local Chairperson, Winnipeg

AWARD OF THE ARBITRATOR

The merits of the grievance must turn on the application of articles 9.15, 9.17, 9.18 and 9.20 of the collective agreement. Inherent in the Brotherhood's position is the assertion that those articles must be construed as giving the grievors the right to have their vacation scheduled in the period commencing January 1 and 4 of 1990. The following, along with article 9.19, are pertinent to the resolution of the grievance:

> **9.15** An employee who is laid off shall be paid for any vacation due him at the beginning of the current calendar year not previously taken, and, if not subsequently recalled to service during such year, shall, upon application, be allowed pay in lieu of any vacation due him at the beginning of the following calendar year.
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> **...**
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> **9.17** An employee who has become entitled to vacation with pay shall be granted such vacation within a twelve-month period immediately following the completion of a calendar year of employment in respect of which the employee became entitled to the vacation.
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> **9.18** A list of the anticipated number of days' vacation entitlement for each employee shall be posted prior to January 1st of each year. Applications for annual vacation shall be filed prior to February 1st of each year.
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> **9.19** Applications filed prior to February 1st, insofar as is practicable to do so, will be allotted vacation during the summer season, in order of seniority of applicants, and unless otherwise authorized by the officer of the Corporation in charge, the vacation period shall be continuous. Applicants will be advised in February of date allotted them, and unless otherwise locally arranged employees must take their vacation at the time allotted.
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> **9.20** Unless otherwise locally arranged, employees who do not apply for vacation prior to February 1st, shall be required to take their vacation at a time to be prescribed by the Corporation.

While the Arbitrator understands the motivation for the instant grievance, he cannot find within the language of the foregoing provisions any support for the position of the Brotherhood that they were violated by the Corporation. On their face, these provisions do not give to the employee an unqualified right to determine the scheduling of his or her own vacation.

It is not disputed that the local chairperson sought to have the grievors placed on vacation solely for the purpose of maintaining their status as persons assigned to a permanent position, to bridge them through the date of the January 15, 1990 implementation of service reductions, thereby giving them access to employment security status. The material before the Arbitrator, however, confirms that the layoff of the grievors in the post-Christmas downturn was consistent with normal practice, in keeping with the legitimate business needs and purposes of the Corporation. There is nothing in the material before me to suggest that their removal from service by the reduction of the spareboard was irregular or was implemented in a manner which was arbitrary or in bad faith, for the purpose of depriving them of their protections under the collective agreement.

While it does not appear disputed that, in principle, an employee can be granted vacation to be taken during the month of January, that is a clearly exceptional circumstance, and is, on the language of the collective agreement provisions, not one which is available to the employee as of right. Beyond the right to take a vacation within the twelve month period immediately following the completion of the calendar year in which it is earned, found in article 9.17, and a general right to be allotted vacation during the summer season, insofar as is practicable, according to seniority, the rights of employees with respect to the timing of vacations are relatively circumscribed. In the circumstances the Arbitrator cannot find any violation of the articles cited by the Brotherhood.

The grievance must therefore be dismissed.

February 14, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR