CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2262

Heard at Montreal, Thursday, 11 June 1992

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

A time claim for 73 hours and 25 minutes at the Service Coordinator's rate of pay on behalf of Mr. H. Woloshyn.

JOINT STATEMENT OF ISSUE:

On June 24, 1991. Mr. Woloshyn and J.P. Blond arrived at Winnipeg as crew members aboard VIA Train No. 1. Mr. Blond operated through to Vancouver and returned to Winnipeg in the capacity of Service Coordinator. Mr. Woloshyn, being the more senior employee, has claimed the time worked by Mr. Blond.

The Brotherhood contends that the Corporation has violated Article 7.8 (d) of Collective Agreement No. 2, as it was practised out of the Winnipeg Terminal.

The Corporation denies any violation of the Collective Agreement. The Corporation contends that Mr. Blond, who had submitted a request for work during his layover, was given the assignment in accordance with Article 7.8 (d) (1). The Corporation had not received a request for extra work from Mr. Woloshyn.

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:

C. Pollock – Senior Officer, Labour Relations, Montreal
D. Fisher – Senior Officer, Labour Relations, Montreal
J. R. Kish – Senior Advisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

K. Naylor – Representative, Winnipeg

AWARD OF THE ARBITRATOR

The sole issue to be resolved in this grievance is whether there was a violation of article 7.8 (d) of the collective agreement. That article provides, in part, as follows:

> **7.8 (d)** When the entire spare board is exhausted of qualified employees, qualified laid-off employees will be called in seniority order. If qualified laid-off employees are not available, positions will be filled in the following order:
>
> **(1) Qualified assigned employees who have declared themselves, in writing, as available for work** during layover, including additional layover, in seniority order providing the assignment can be completed during such layover days and the rate of pay for the classification required is equal to or higher than their assigned position.
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> (emphasis added)

It is common ground Mr. Blond had declared himself, in writing, as available for work during the layover. Mr. Woloshyn did not. While Mr. Blond communicated his availability by means of a fax sent to the Winnipeg home terminal from Toronto, there is nothing in that which appears to have prejudiced the rights of Mr. Woloshyn. Firstly, the Corporation submits that all employees on Train No. 1, including Mr. Woloshyn, were made aware of the need for employees willing to perform extra work by the Crew Caller at the Winnipeg terminal. It submits that the crews were informed that an "extra work" slip could be faxed to Winnipeg upon their arrival in Toronto. This is partially substantiated, to the extent that Mr. Blond was not the only employee who submitted a written indication of his willingness to perform extra work by fax. Moreover, even if it is accepted that Mr. Woloshyn was unaware of the ability to communicate his availability for extra work by fax, the evidence discloses that he had ample opportunity to declare himself available in writing, following the return of his train to Winnipeg, but that he did not do so.

In the circumstances, the decision of the Corporation to award extra work to Mr. Blond cannot be construed as a violation of the provisions of article 7.8 (d) of the collective agreement. There is nothing in the terms of that article which would prohibit the communication of a written declaration of availability for work during layover by fax, in advance of the actual commencement of the layover. Moreover, on the facts of the instant case, even if it were shown that Mr. Woloshyn was not aware of that option, he had a reasonable opportunity to declare himself available for extra work, in writing, upon the return of his train. He failed to do so, and cannot, in the Arbitrator's view, now claim to have been prejudiced. No violation of the collective agreement having been disclosed, the grievance must be dismissed.

June 12, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR