CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2613

Heard in Calgary, Tuesday, 9 May 1995

concerning

VIA RAIL CANADA INC.

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

A claim for payment for the May 24, 1993 General Holiday on behalf of L. Klassen.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the grievor and other spareboard employees who had booked rest under article 7.11 of collective agreement no. 2 are entitled to payment for the May 24th general holiday, and that this statutory holiday becomes payable to employees on the first normal working day, immediately following the general holiday.

The Corporation declined the grievance on behalf of Mr. Klassen, in that he was not available for service on the holiday as required by article 8.3(d) by virtue of having booked rest to 23:59 hrs. on the date in question, therefore, there was no violation of the collective agreement.

Notwithstanding, the Corporation nevertheless maintains that the grievance cannot succeed as it is technically flawed, in that the Brotherhood failed to satisfy the mandatory requirements at Step 2 of the grievance procedure.

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

There appeared on behalf of the Corporation:

C. Pollock	– Senior Labour Relations Officer, Montreal
H. Moore	– Manager, Customer Service, Vancouver

And on behalf of the Union:

D. Olshewski	– Regional Coordinator, Winnipeg
R. Storness-Bliss	– Regional Coordinator, Vancouver

AWARD OF THE ARBITRATOR

The issue to be resolved is whether the grievor, who booked rest which covered the May 24 general holiday is, as the Union contends, entitled to claim his first normal working day as the statutory holiday, and to be paid accordingly, in accordance with article 8.3 of the collective agreement.

Article 8.3 of the collective agreement provides, in part, that when a general holiday falls on an employee's rest day the holiday is to be moved to the normal working day immediately following the employee's rest day. In the case at hand it is common ground that the general holiday did fall on Mr. Klassen's rest day. The Corporation takes the position that Mr. Klassen, having booked rest, could not be called, and was therefore not available for service, thereby disentitling him to the holiday pay protection. It submits that its position is supported by article 8.3 which provides, in part, as follows:

> **8.3** In order to qualify for pay for any one of the holidays specified in article 8.1, an employee
> **(a)** must have been in service of the Corporation and available for duty for at least 30 calendar days.
> ...
> **(d)** Employees in spare service shall not be governed by the provisions of clauses (b) or (c) of this article 8.3 but, in addition to meeting the requirements of clause (a) thereof, must have been available for service on the holiday if required and, unless required to work on the holiday, must have been in service or available from the spare board for such service as may be required for at least 12 calendar days during the 30 calendar-day period immediately preceding the general holiday.

Further, the Corporation stresses that it was limited in its ability to call the grievor to work by the provisions of article 7.11 of the collective agreement which provides as follows:

> **7.11 (a)** Spare Employees will be returned to the spare board in accordance with articles 7.9 and 7.10 and will not be called until expiration of their rest period except in event of emergency.
> **(b)** Spare employees, may, on signed request, have a layover period for rest (at home terminal) after revenue or deadhead service not exceeding in total the compensated hours for their last round trip in Transcontinental Service and twice the compensated hours in other than Transcontinental Service except in event of emergency.

The Union submits that in fact the grievor was not unavailable for service in the sense contemplated by article 8.3(d). It accepts that that article applies to the grievor, who was in spare service at the time. Further, however, it relies on the definition of the phrase "available employee" found in article 1.1(d) of the collective agreement which is as follows:

> **1.1 (d)** "Available Employee" – an employee who is either on standby or on the spare board or on layover at home terminal.

Upon a review of the provisions of the agreement argued by the parties, the Arbitrator is of the view that the position of the Union must prevail. I find it impossible to conclude that the parties intended article 1.1(d) to contain an implied exception for an employee in spare service who is on layover at his or her terminal, insofar as that article might relate to the application of article 8.3(d) of the collective agreement. Article 1.1(a) of the agreement defines employee as "... a person holding seniority under the terms of this Agreement." No distinction is made as between regularly assigned or spare board employees. In the result, the Arbitrator is compelled to give to the words of the collective agreement the meaning which they most naturally bear.

The word "available" found within article 8.3(d) must, it seems to me, be read in a manner consistent with the definition of an available employee expressly agreed to in article 1.1(d). By the language of that provision, an employee is to be considered available while on layover at his or her own terminal. That, in the Arbitrator's view, fairly describes the situation of the grievor who was on his "layover period for rest" as contemplated under article 7.11(b) of the collective agreement at all material times. For reasons which they best appreciate, the parties expressly agreed that an employee on layover at his or her home terminal is considered to be an available employee for the purposes of the collective agreement. Moreover, the language of article 7.11(a) would indicate that the Corporation was entitled to call the grievor in a circumstance of urgency, and he must be considered to have been available on that basis, if on no other.

For all of the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the grievor met the conditions of article 8.3 of the collective agreement and qualified for holiday pay on Victoria Day, 1993. The Arbitrator directs that the grievor be compensated accordingly, and having regard to the fact that the matter has been processed as a policy grievance, that employees with similar claims be likewise reimbursed.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR