CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3343

Heard in Montreal, Wednesday, 11 June 2003

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Concerning collective agreement no. 2 employees not being afforded vacation allotment during the summer months.

JOINT STATEMENT OF ISSUE:

Article 9.19 of collective agreement no. 2 reads, in part, as follows: "Applications filed prior to February 1st, insofar as it is practicable to do so, will be allotted vacation during the summer season, in order of seniority of applicants." The Union alleges that the Corporation has failed to live up to that provision in granting employees summer vacation as stipulated. The Uni further alleges that the practice at Montreal is contrary to the provisions of the collective agreement and inconsistent with the practice in the rest of the country.

The Union seeks an order from the Arbitrator such that the current method of applying vacations in contrary to the collective agreement and that the Arbitrator issue instructions to the Corporation to enter into negotiations with the Union in an effort to find a mutually agreeable formula for providing summer vacations. Failing that, we ask that the Arbitrator remain seized of the matter and that it be further spoken to should the parties be unable to reach an agreement.

The Corporation submits that article 9.19 requires the allotment of vacation during the summer season subject to the qualifier "insofar as is practicable to do so". The Corporation must ensure that vacation allotment does not hamper operational requirements. There must be sufficient employees to protect all work schedules and additional work necessary to avoid delay, disruption or undue expense to the operation.

The Corporation maintains there has been no violation of the collective agreement.

FOR THE UNION:	FOR THE CORPORATION:
(SGD.) D. OLSHEWSKI	(SGD.) L. LAPLANTE
NATIONAL REPRESENTATIVE	FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

L. Laplante	– Labour Relations Officer, Montreal
E. J. Houlihan	– Sr. Manager, Labour Relations, Montreal
Y. Noël	– Manager, Regional Activities
R. Guérin	– Assistant Superintendent, Transportation & Customer Services, Ottawa

And on behalf of the Union:

D. Olshewski	– National Representative, Winnipeg
P. Rouleau	– Regional Bargaining Representative, Montreal
D. Andru	– Regional Bargaining Representative, Toronto
R. Massé	– Regional Bargaining Representative, Montreal

AWARD OF THE ARBITRATOR

The Union maintains that the Corporation has essentially disregarded the provisions of article 9.19 of the collective agreement in the allocation of vacation during the summer season. The Corporation maintains that it has allowed the scheduling of vacation in the months of July and August "insofar as is practicable to do so". It maintains that operational requirements give it no other option.

The provision of the collective agreement at issue reads as follows:

> **9.19** Applications filed prior to February 1st, insofar as it is practicable to do so, will be allotted vacation during the summer season, in order of seniority of applicants. Unless otherwise authorized by the officer of the Corporation in charge, the vacation period may be split once at the employee's discretion, provided it does not cause the Corporation to incur any additional expense in the protection of guarantee or otherwise. If the employee does not elect to split his vacation, it shall be continuous. Applicants will be advised in February of dates allotted to them, and unless otherwise locally arranged, employees must take their vacation at the time(s) allotted.

The fundamental position argued by the Union is that the intent of the article is to ensure that the summer months become the most frequently used vacation period, as compared with other parts of the year. While it acknowledges that not all employees will be able, by reason of their seniority, to successfully bid a summer vacation period, it maintains that the article intends, at a minimum, that there be a substantive right to at least a greater concentration of vacation during the summer period, which, for the purposes of this grievance, its representative describes as falling between June 21 and September 21. It further stresses that the grievance is confined to the location of Montreal, noting that there is no significant problem with the administration of article 9.19 at other terminals.

By way of example, Montreal is compared to Winnipeg. In 1999, the year the grievance was filed, the Corporation allowed no more than fifteen employees at Montreal to take vacation in any two week pay period during the summer season. In the same year seventeen employees at Winnipeg were given that opportunity. Notably, in 1999, twenty employees were allowed vacation opportunities in Montreal during the two week pay periods commencing October 3 through November 6. There was, in other words, a greater concentration of available vacation slots during the non-summer season in Montreal than in the summer season.

The Union's representative notes, moreover, that in some years Winnipeg substantially surpasses the figures for vacations available during the vacation season, pointing to the fact that twenty-five vacation opportunities were utilized at Winnipeg in the summer season in the year 2000, sixteen in 2001, twenty in 2002 and nineteen in 2003. As reflected in the data provided to the Arbitrator, at Winnipeg fewer employees are compelled to take their vacation in the shoulder seasons of the spring and autumn, and the greater concentration of vacation opportunities remains within the summer season, with the possible exception of the Christmas period. Data provided for the terminal of Toronto, which the Union maintains is perhaps more directly comparable to Montreal, by reason of its involvement in corridor service, also shows a substantially greater concentration of vacation opportunities during the summer season, as compared with the spring and fall, in marked contrast to Montreal. That patter clearly holds true for Toronto through the years 1999 and 2000, for which data was made available.

The Union's representative submits that the greater feasibility of summer vacation opportunities at Winnipeg is promoted by the significant hiring of summer employees by the Corporation at Winnipeg, and the augmenting of the Corporation's spareboard at that location to assist in providing summer vacations to its regular employees. With respect to Toronto the Union stresses that there are fewer employees in Toronto, yet the absolute numbers of vacation slots during the summer period were the same in Toronto as in Montreal in 1999 and 2000. In other words, junior employees in Toronto had decidedly greater access to vacation opportunities in the summer months than more senior employees in Montreal.

The Corporation maintains that the examination of these numbers does not tell the entire story. It's representative stresses that the language of article 9.19 of the collective agreement entitles the Corporation to balance the employees entitlement to a vacation during the summer period with the operational requirements of the Corporation, as acknowledged in the use of the phrase "insofar as it is practicable". She stresses, citing **CROA 175**, that the word "practicable" does not mean simply capable of being done, but that due regard must be had to maintaining efficient operations. To the same effect reference is made to **CROA 244** and **SHP 516**.

The Corporation's representative explains that vacation allotments are managed by having regard to staffing levels necessitated by the pattern of passenger loads during the periods in question, as reflected in the experience of

previous years. She notes that while it is true that in 1997 the Corporation allowed twenty employees at Montreal to take vacation during the pay periods of the summer season, it became impracticable thereafter to maintain that number. In that regard reference is made to the substantial reorganization of the Corporation's operations in 1998, the year the NEPO initiative was implemented. The Corporation submits that that change, coupled with increases in passenger loads resulted in difficulties in staffing its trains throughout the summer. In that regard reference is made to the increases in passenger loads experienced in 1998. Reference is also made to the need which the Corporation experienced for recourse to overtime during the summer months. Similar reference is made to increases in passenger volumes in 1999, with additional reference to rates of employee attrition and successful recruitment during the periods under examination. The Corporation also draws to the Arbitrator's attention operational differences which operate at Montreal, as compared with Toronto where there is a greater availability of shorter runs and shorter tours of duty. It notes that as a result there is less need to back fill on the spareboard in Toronto, as compared with Montreal.

On a review of the material presented the Arbitrator well appreciates the constraints which the Corporation faces in the different kinds of operations which it has in Montreal, as compared with other locations such as Toronto, which does have shorter runs, or Winnipeg and Halifax, which staff the transcontinental service. That said, however, there is some concern arising from the material as to the overall equity of the system as it is administered at Montreal. That is particularly so when regard is had to the reality of passenger volumes. During the course of grievance correspondence, at step II, the Corporation responded in part to the Union that the difficulty with offering vacation opportunities during the summer in Montreal was that the summer vacation is the busiest time of the year for handling passenger volumes, as a result of which there must be some restraint in allowing vacation opportunities.

In fact, the data before the Arbitrator is to the contrary. While it is true that the transcontinental trains serviced primarily from Winnipeg and Halifax do experience a significant increase in ridership during the summer, the corridor services from the Montreal terminal see a decrease in ridership during the summer months, and an actual increase in the shoulder seasons and winter months. That would appear to be confirmed in the data for passenger volumes experienced on trains 31, 34, 36, 37, 38, 44 and 64, filed in evidence. For example, a comparison of the first week of summer, June 23 through 29, 2002 with the week of October 13 through October 19, 2002 shows a substantially greater total ridership on trains 31, 34, 36, 37, 38 and 44 in the October period than in the summer period of June 23 to 29. The Union's representative stresses, however, that twenty employees were forced to take vacation during the October period, while only fifteen employees were allowed vacation during the summer weeks of June 23 through 29.

While some of the data before the Arbitrator are admittedly less than complete, there is little or nothing in the submissions of the Corporation to substantiate the suggestion that the Corporation is constrained in allotting vacation periods to the summer months by reason of any increase in ridership. With due allowance for certain particularities of the Montreal terminal, the Arbitrator is nevertheless left in some doubt as to the impracticality or non-feasibility of achieving levels of summer vacation opportunities in Montreal which would be at least comparable to those which seem to be workable in both Winnipeg and Toronto. While it may be that certain adjustments may need to be made with respect to the management of spareboards and the utilization of summer relief employees, those considerations are not, in my respectful view, beyond what may be fairly considered to be within the realm of practicability. Nor, in my view, does an event such as the NEPO initiative necessarily justify a curtailment of an equitable distribution of summer vacation opportunities. It may be that the elimination of conductors, and the transfer of certain of their duties to the on-board service staff may have been something of a constraining factor. However, the fact remains that the substantial savings realized by the Corporation by that initiative could give some latitude for adjusting the complement of service employees available, whether through the use of summer students or increases in the spareboard, even, acknowledging that that might indeed involve certain costs in relation to training.

On the whole, therefore, the Arbitrator is satisfied, on the balance of probabilities, that the Union has demonstrated that as regards the assignment of vacation periods at Montreal, the Corporation has not allotted vacation during the summer season to the level of practicability contemplated within article 9.19 of the collective agreement. The Arbitrator therefore directs that the Corporation enter into negotiations with the Union in a good faith effort on the part of both parties to find a mutually agreeable formula for restoring a more equitable distribution of summer vacation opportunities. Should the parties be unable to agree on any ultimate formula, the Arbitrator retains jurisdiction.

June 19, 2003

(signed) MICHEL G. PICHER
ARBITRATOR