CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3897

Heard in Montreal, Tuesday, 11 May 2010

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Whether the Corporation violated article 12.11 regarding training after forced assignment of employees to an unfilled vacancy.

JOINT STATEMENT OF ISSUE:

In June 2009, Mr. Smith Jean was force assigned to an In-Charge position in Toronto Union Station.

The Union's position is that when an employee is forced assigned, article 12.11 states that the Corporation will commence the training of another employee immediately. The Union contends that the Corporation has consistently either not trained another employee and/or not trained them immediately.

The Corporation submits that the In-Charge position involves selection for promotion and is governed by article 2.2 of the collective agreement. The Corporation maintains that that training obligation applies to a vacancy and not to a temporary vacancy as defined in the collective agreement. In addition, the Corporation submits that if the employee is able to resume their former position within 45 days due to a trained employee becoming available, the training obligation does not apply.

FOR THE UNION:

(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE

FOR THE CORPORATION:

(SGD.) B. A. BLAIR
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

B. A. Blair	– Sr. Labour Relations Advisor, Montreal
T. Kahnert	– Manager, C.E., Toronto

And on behalf of the Union:

D. Andru	– Regional Representative, Toronto
R. Fitgerald	– National Staff Representative, Toronto
B. Kennedy	– President, Edmonton

AWARD OF THE ARBITRATOR

The Union maintains that when the Corporation force assigned employee Smith Jean to occupy a temporary vacancy for a period of four days due to the vacation schedule of another employee, it fell under the obligation to train an employee for that position, in accordance with the provisions of article 12.11 of the collective agreement. That article reads as follows:

> **12.11** In the event that there is an unfilled vacancy for which there is no qualified applicant, a qualified employee at the station or terminal may be required to fill such a position. The qualified employee will be selected in reverse seniority order on a rotating basis to distribute the required work. In such cases, the Corporation will commence the training of another employee for the position immediately so that the employee required to fill the position may be returned to his regular assignment as soon as is practicable and shall be able to resume his former position after 45 calendar days. The Corporation shall inform the Local Chairperson under whose jurisdiction the employee comes that this article has been invoked.

The Arbitrator can see no merit to this grievance. As can be seen from the text of article 12.11, the purpose of immediately training another employee for the position is to allow the forced employee to return to his or her regular assignment “as soon as is practicable” and in any event, no later than within forty-five calendar days.

The position which is the subject of this dispute is that of In-Charge baggage. It is not disputed that that position is subject to a selection process, as contemplated in article 2.2 of the collective agreement. Significantly, the unchallenged representation of the Corporation is that the process of selection and training for an In-Charge position

can take four to six weeks to complete. That is unreasonable in the face of a four day temporary vacancy.

In the circumstances the Arbitrator is compelled to share position of the Corporation, namely that the language of article 2.2 and the importance of the selection process for In-Charge positions must be seen as overriding the more general provisions of article 12.11 of the collective agreement. Alternatively, article 12.11 could not reasonably apply in the circumstances.

For all of the foregoing reasons the grievance must be dismissed.

May 17, 2010

(SIGNED) MICHEL G. PICHER
ARBITRATOR