## IN THE MATTER OF AN INTEREST ARBITRATION

**Between:**

**VIA RAIL CANADA INC.**
**(“the Employer” or “VIA RAIL”)**

**and:**

**TEAMSTERS CANADA RAIL CONFERENCE**
**(“the Union” OR “TCRC”)**

**Re: WAGES AND PENSION PLAN DISPUTE**

**INTEREST ARBITRATION BOARD:**

| | | |
|---|---|---|
| MICHEL G. PICHER | - | CHAIR |
| PIERRE LAMARRE | - | VIA RAIL NOMINEE |
| HAROLD CALEY | - | TCRC NOMINEE |

**APPEARANCES FOR VIA RAIL:**

| | | |
|---|---|---|
| Marc Benoit | - | Counsel |
| Ed Houlihan | - | Director, Employee Relations |
| François Quinty | - | Dir., Investment Management |
| Gerry Kolaitis | - | Director, Strategic Planning |
| Josée Lamarre | - | Director, Total Compensation |
| Wade Buckley | - | Manager, Train Operations |
| Gilbert Sarazin | - | Senior Advisor, Lab. Relations |
| F. Hubert Tremblay | - | Principal, Mercer |

**APPEARANCES FOR TCRC:**

| | | |
|---|---|---|
| Michael A. Church | - | Counsel |
| Roland Hackl | - | National Vice- President |
| William Michael | - | General Chairman, Central |
| Phil Hope | - | Vice-General Chairman, Toronto |
| Jean-Michel Hallé | - | General Chairman, East |
| Bruce Willows | - | General Chairman, West |
| Bob Ermet | - | Vice-General Chairman, West |
| Susan Chorty | - | PBI, Actuarial Consultant |
| Nisha Singh | - | PBI, Actuarial Consultant |

**Hearings in this matter were held in Montreal, Quebec on November 6 and December 10 and 11, 2015 and April 8, 2016.**

# AWARD

This is a binding interest arbitration. From January through June of 2015, the parties bargained steadily for the renewal of their collective agreement, which expired on December 31, 2014. Because the parties were unable to find agreement on all issues, they executed a Memorandum of Agreement dated June 3, 2015 through which they submitted two outstanding issues to binding interest arbitration. Those two remaining issues to be determined by this Board are (1) wage increases for the term of the three year collective agreement and (2) Via Rail's proposal that new employees hired into the TCRC bargaining unit after January 1, 2015 will be included under the Unionized Hybrid Pension Plan (applicable now for new Unifor entrants) instead of under the Defined Benefit (DB) Pension Plan for Unionized Employees, where they are currently situated.

Via Rail is an independent crown corporation and is mandated to offer intercity passenger rail services in Canada. It is financed from government revenues and fares paid by passengers. Via Rail, along with CN and CP, are governed by the Canada Transportation Act, S.C. 1996, c. 10. Via Rail is not, in such circumstances, a private sector employer.

The TCRC represents Via Rail's locomotive engineers and a small number of remaining traffic coordinators. It should be noted that when the Board refers to "locomotive engineers" as the members of the TCRC bargaining unit at Via Rail, it is including as well the few remaining traffic coordinators who are also in the bargaining unit. This TCRC bargaining unit consists of a small group of approximately 350 employees who are relatively high wage earners.

**-A-**

## <u>RELEVANT PRINCIPLES FOR DETERMINING THIS INTEREST ARBITRATION:</u>

In their submissions, the parties drew the Board's attention to the discussion of the applicable criteria for interest arbitrators in <u>Re City of Ottawa and Amalgamated Transit Union, Local 279</u>, decision of a board of arbitration chaired by M.B. Keller dated October 9, 2009, at pages 4-7 as follows:

> The criteria used by the Board to reach its conclusions include, in no particular order:
>
> 1) **<u>The economic context.</u>** This means that the Board has to be cognizant of the economic climate in Canada and Ontario, generally, and in Ottawa, specifically. **We must consider the ability of the City and its citizens, to pay for what is awarded.** At the same time, as Arbitrator Shime wrote:
>
> > Public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions … if the community needs and demands the public service, then members of the community must bear the necessary costs to provide fair and equitable wages and not … expect the employees to subsidize the service by accepting substandard wages …

2) **<u>Comparability</u>**

In trying to determine what is appropriate to award, **the Board must look at other groups of employees and compare what they have in their collective agreements** to what the employees in this bargaining unit have, and are seeking. There are normally three groups of comparators.

**The first group of comparators is other municipal transit bargaining units.** These include transit systems in other municipalities such as Toronto, Mississauga, Brampton, Hamilton, Durham, Gatineau, London, etc. These comparators are important because transit employees are entitled to terms and conditions of employment similar to those negotiated for other transit employees elsewhere in Ontario and Canada.

**The second group of comparators is other public sector employees in the province.** This group of comparators is relevant because part of the funding for the transit service comes from other levels of government.

**The third group of comparators, and an important one, is internal comparators.** The City has other bargaining units representing other employees. …

The Board will look at what the employer has been prepared to accept, or offer, in negotiations with its other employees to assist in determining what is appropriate to award in the instant case. It is not, however, as simple as awarding whatever is found elsewhere, as the context of each negotiation is different, and the needs and priorities will rarely be the same for each group of employees. …

Negotiations that have taken place in the same general time frame, by this employer, with other of its bargaining units, are instructive particularly when considering issues that have an economic impact.

3) **Replication**

The Board must attempt to reproduce, to the extent possible, the result the parties would have reached on their own.

4) **Demonstrated Need**

It is not sufficient to make a proposal for the Board to award it. **The party seeking a change to an existing provision to a collective agreement must demonstrate a need for the change. As well, the proposal must deal with the stated need.**

5) **Total Compensation**

**No item that has a cost implication can be looked at in isolation.** The Board must weigh the total costs, or savings, of the proposals, as well as the total compensation package of employees. Where there is a significant expenditure or cost savings to the employer, this must be taken into consideration when examining other proposals.

…

**In summary**, interest arbitration follows a process, understood by the parties, that has developed over many years. It is a process by which the arbitrator attempts to duplicate the result the parties would likely have achieved if negotiations were successfully concluded freely by the parties themselves. The process requires the arbitrator, within the context of the local community and the specific operations of the employer, to consider what is the norm for similar occupations elsewhere in the Province, as well as

> taking into account what the employer has agreed to with its other employees.
>
> **Arbitration is not a process where either party should expect or anticipate major breakthroughs or significant deviations from the norm. Where a party wishes to alter the status quo, they have the onus to show a need for the change.**
>
> [emphasis added]

Regarding the application of the principle of replication, the TCRC points particularly to the interest arbitration award in Extendicare and CAW, locals 302, 504, 830, 1120 & 2458, dated October 9, 2012, Can LII 58551 (Ont. La) in which Arbitrator William Kaplan stated, at page 3, the following:

> … careful attention has also been paid to replication, and by that I mean the requirement that boards of interest arbitration attempt to replicate the results which would have occurred if the collective bargaining process had not been interrupted by interest arbitration. What interest arbitrators attempt to achieve is a result that approximates, as closely as possible, what the parties would have accomplished by way of free collective bargaining.

Additionally, regarding the weight to be attributed to the parties' refusal to yield on an issue, the Board's attention was drawn to the interest arbitration award in Re University of Toronto and the University of Toronto University of Toronto Faculty Association**,** dated March 27, 2006. The board, chaired by then Regional Senior Justice Warren Winkler, highlighted that the application of the principle of replication should be guided by "objective criteria" as opposed to the parties' "self-imposed limitations", as follows, at page 8 or paragraph 17:

> [17] There is a single coherent approach suggested by these authorities which may be stated as follows: The replication principle requires the panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. **However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties in formulating an award.** …
>
> [emphasis added]

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## WAGE INCREASES:

We turn first to consider the outstanding issue of the wage increases that should be applied over the three year term of the collective agreement from January 1, 2015 through December 31, 2017. The final offer of Via Rail for wage increases for the locomotive engineers and others in the TCRC bargaining unit is as follows:

- 1.5% increase starting January 1, 2015;
- 1.5% increase starting January 1, 2016, and
- 1.5% increase starting January 1, 2017.

The final offer of the TCRC for such increases is the following:

- 2.5% increase starting January 1, 2015;
- 3 % increase starting January 1, 2016, and
- 3 % increase starting January 1, 2017.

## 1. **<u>Position of the TCRC on Wages:</u>**

Counsel for the TCRC maintains that Via Rail is seeking a breakthrough in its wage proposal because, it asserts, historically, Via Rail has followed the wage pattern for similar crafts at CN and CP and, moreover, that the TCRC traditionally achieves a 3% increase for its bargaining units.

The TCRC maintains that the most appropriate comparator employers respecting wages are CN and CP given that the consistent past practice in this industry has been that Via Rail, for its entire existence, has followed for its locomotive engineer/traffic coordinator wage increases the pattern set at either CN and/or CP. Mr. Ronald Hackl, the National Vice-President for the TCRC and the chief negotiator for the bargaining team, similarly testified, without contradiction, that wage increases at VIA have almost always followed the same wage increases for the same crafts at both CN and CP. Further emphasizing the appropriateness of CN and CP as the most persuasive comparators, counsel for the TCRC highlights that the large majority of Via Rail's locomotive engineers (which classification, as noted, constitutes the vast majority of the members of the TCRC bargaining unit) transferred to Via Rail from CN. Counsel stresses that the TCRC locomotive engineers all do similar work for the three Class 1 Canadian railways: CN, CP and Via Rail.

TCRC represents a number of bargaining units at CN and CP. Regarding the time frame in issue in the instant matter, counsel for the TCRC notes that with CP, the TCRC was able to voluntarily negotiate a 3% wage increase for all of its running trades for the years 2015, 2016 and 2017. With respect to CN, the evidence reveals that the TCRC negotiated voluntary collective agreements for all of its locomotive engineer bargaining units which also provide a 3% wage increase for each of 2015, 2016 and 2017.

Counsel for the TCRC asserts that Via Rail has not advanced any substantial argument to justify departing from what has been, in its view, an historical reliance on CN and CP as comparators and a consistent past practice in this industry. He observes that employees at CN still have the ability to transfer to Via Rail and stresses that they are all performing essentially the same job under similar working conditions.

Regarding the appropriateness of Bombardier Transportation – North America as a persuasive comparator, counsel for the TCRC contends, based in part on the evidence of Mr. Hackl, that Bombardier's TCRC bargaining unit is relatively new, that it has very different demographics from those in the CN, CP or Via Rail bargaining units and that the TCRC members there work under very different working conditions from those at Via Rail. Counsel further notes that Bombardier has been in the commuter rail business for less than a decade and does not own any equipment. Rather, counsel observes, it supplies TCRC employees on a contract basis to Go Transit, which then assumes control.

Finally, counsel highlights that the TCRC has voluntarily agreed to accept less than a 3% increase for 2015 and has proposed, instead, a 2.5% increase for 2015. In this regard, the TCRC emphasizes that Via Rail voluntarily agreed to a 2.5% increase for 2015 for its much larger Unifor bargaining unit. For the years 2013 and 2014, the voluntary agreement with Unifor had been for wage increases of 3%.

## 2. Position of Via Rail on Wage Increases:

Via Rail disputes the contention of the TCRC that its wage increases should be set at either the CN and/or CP level for locomotive engineers or in accordance with "industry standard". Counsel for Via Rail argues that there is nothing in common between Via Rail, on the one hand, and CN and CP, on the other, and that, accordingly, it is not possible to compare the "industry" of CN/CP with that of Via Rail. In support of this assertion, counsel for Via Rail contends that in 2015 neither CN nor CP carried a single passenger and, instead, transported, exclusively, freight and/or bulk commodities. Equally, counsel highlights that Via Rail's business is the transportation of passengers only, to the exclusion of any type of freight. Via Rail maintains, then, that CN and CP are not proper comparators because they are neither competitors nor remotely involved in a comparable business.

According to Via Rail, the appropriate comparators are entities involved in the transportation of passengers in more or less similar geographic areas. To this end, Via Rail points to the following entities in Quebec operating in passenger transportation: Société de Transport de Montréal and SCFP; Réseau de Transport de Longueuil and Syndicat canadien de la function publique, section locale 333; Société de Transport de Sherbrooke and SCFP; Société de Transport de Saguenay and Syndicat canadien de la function publique, section locale 3124; Réseau de Transport de la capitale and Syndicat des employés du transport pubic du Quebéc Metropolitain, and Véolia Transdev Québec inc., division 2755-4609 and Teamsters Québec, local 106.

For the entities set out above, relied upon by Via Rail as appropriate comparators because they are in the business of transporting passengers in cities in Quebec, the average wage increases for 2015, 2016 and 2017 were, respectively, +2%, +2.4% and +2.2%.

Turning to Ontario, the entities relied on by Via Rail operating in the sector of passenger transportation include the City of Guelph and ATU, local 1180; the Regional Municipality of Waterloo and Unifor; the Toronto Transit Commission and Local 113, ATU; the Corporation of the City of Thunder Bay and ATU, local 966;

Go Transit and ATU, local 1587, Cardinal Coach Lines ULC and Teamsters, local 938, and Bombardier Transportation – North America and TCRC (service, repair and maintenance, Ontario).

For the entities set out above, relied upon by Via Rail as appropriate comparators because they are in the business of transporting passengers in cities in Ontario, the average wage increases for 2015, 2016 and 2017 were, respectively, +1.6%, +2.1% and +2.3%. More specifically, for Bombardier, which Via Rail points to as having heightened significance, the wage increases for 2015, 2016 and 2017, respectively, are +2%, +2% and +2.75%. For Go Transit, another enterprise that Via Rail asserts has particular significance, the wage increases for the same time frame were +1.6%, +2.1% and +2.3%.

For Alberta companies cited by Via Rail the available average for 2015 and 2016 was +2.6% and +3%. For British Columbia it was +1.9% and +2.3%.

For the multiple federal enterprises operating in the sector of passenger transportation relied on by Via Rail as appropriate comparators, the average wage increases for the years in question were +2%, +2% and +1.9%.

For Crown corporation enterprises operating in the transportation sector relied on by Via Rail, including Administration portuaire de Montréal and CSN, the Vancouver Fraser Port Authority, Purolator Inc. and Teamsters Canada (both office employees, multi province and messengers) and Marine Atlantic Inc. and AFL-CIO/CLC, the average available wage increase for 2015 was +2.3%, for 2016 was +2.6% and for 2017 was +3.9 %.

As noted above, Via Rail maintains that particular interest, by way of a comparator, must be given to Go Transit (Bombardier Transportation-North America), where the train operators are supplied by Bombardier and represented by the TCRC. Via Rail maintains that Bombardier's operations are "on all fours" with those of Via Rail. Counsel for Via Rail further emphasizes that the documents demonstrate that under the Via Rail/TCRC collective agreement expiring in 2014, the average annual salary was $113,000.00 while under the Bombardier/TCRC collective agreement expiring in 2017, the average train operator's salary is $93,500. It is noted that for 2015, 2016 and 2017, Bombardier gave wage increases to the TCRC of +2%, +2% and +2.75%.

## 3. <u>BOARD'S DECISION REGARDING WAGE INCREASES:</u>

The Board has carefully assessed the submissions of the parties. Via Rail's rationale for dismissing CN and CP as appropriate comparators for Via Rail's TCRC bargaining unit composed largely of locomotive engineers is based on the circumstance (1) that CN and CP move freight and/or bulk commodities while VIA transports passengers and (2) that CN and CP have significantly larger operating incomes. Instead of using CN and CP as appropriate comparators, Via Rail looks to passenger transportation employers that provide, for example, bus, subway, street car and urban oriented commuter train services and which, it asserts, operate in more or less similar geographic areas. Via Rail particularly points to Bombardier, which supplies train operators to Go Transit in Southern Ontario.

This Board is satisfied that in assessing the appropriateness of a given comparator, what is being transported, be it freight or passengers, is not as significant as the circumstances under which the transportation is being carried out and how the work is being performed. The locomotive engineers represented by the TCRC at CN, CP and Via Rail are required to exercise the same skill and ability to operate complex locomotives, to know and follow the railway rules of the road, to be familiar with signaling and radio communications and to have sufficient familiarity with all of the equipment that comprises a train. They all run trains on main track covering a vast geographic area where the work among the TCRC employees is performed country-wide and is not restricted to a single urban area or region. Moreover, many of the Via Rail locomotive engineers came directly from CN.

The working conditions for and the skills required of these locomotive engineers operating trains for CN, CP and Via Rail are significantly and substantially different from those applicable to most all of the comparators relied on by Via Rail including enterprises that transport passengers by means, for example, of buses, subways or street cars.

While it would appear that the train operators supplied by Bombardier to Go Transit, in all likelihood, would have and apply many of the same skills and abilities as the TCRC locomotive engineers at Via Rail, the Board is unable to accept that the comparator of the Go Transit/Bombardier combination advanced by Via Rail should be adopted over CN and CP. Go Transit is a shorter passenger commuter service focused in Southern Ontario. It is not a long distance passenger service with the added complexities and variations that such a long distance service would involve. Most significantly, the Board accepts the submissions of the TCRC and the evidence of Mr. Hackl, the national vice-president of TCRC who has had vast experience in the area, including representing the TCRC in bargaining at CN, CP and Via Rail over the years, that Bombardier is a relatively new bargaining unit with very different demographics from the CN, CP or Via Rail bargaining units and that the Bombardier employees operate under substantially different working conditions. The Board accepts the TCRC submission that Bombardier is a significantly different type of employer in that it has no equipment and supplies employees on a contract basis to Go Transit.

Neither the evidence presented nor the submissions presented on behalf of Via Rail have persuaded the Board that CN and CP are not the most persuasive comparators in the instant matter. In fact, for the reasons set out, the Board concludes on the evidence that CN and CP are indeed the closest comparators for determining the appropriate wage increases for the TCRC bargaining unit at Via

Rail. The evidence reveals that over the years the wages for the TCRC locomotive engineers at Via Rail have followed the wages increases that have been either awarded to or bargained for the same crafts at CN and CP.

Additionally, respecting an internal comparator, it is noted that in respect of Via Rail's larger bargaining unit, represented by Unifor, for the years 2013, 2014, and 2015, Via Rail agreed to wages increases of 3%, 3% and 2.5%, respectively.

In the result, in light of the forgoing and for the reasons set out, the Board awards the wage increases requested by the TCRC, which are +2.5% for 2015, +3% for 2016 and +3% for 2017, with full retroactive pay to both current and former employees.

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## THE PENSION PLAN:

### 1. SUMMARY OF THE POSITIONS OF THE PARTIES:

#### a) Proposal of Via Rail:

Via Rail proposes extending its existing Unionized Hybrid Pension Plan to TCRC employees hired on or after January 1, 2015.

It is noted that the current TCRC employees, those hired before January 1, 2015, would continue to participate in the Defined Benefit (DB) Pension Plan.

### b) <u>Proposal of the TCRC:</u>

The TCRC proposal is for no change, such that the TCRC employees hired on or after January 1, 2015 would, like the current employees, continue to participate in the DB Pension Plan for Unionized Employees.

## 2. <u>BACKGROUND:</u>

Via Rail's DB Pension Plan for Unionized Employees was established in 1979 and was inherited from CP and CN, both of which entities continue to have a DB Pension Plan for all current and new employees.

As of December 31, 2014, the DB Pension Plan for Unionized Employees at Via Rail had 6514 participants:

(i) 58% or 3,773 are retirees and deferred members who represent 63% of the Plan's liabilities;

(ii) 37% or 2,433 are active members, who represent 35% of the Plan's liabilities, and

(iii) 5% or 308 are pending members.

Via Rail's Hybrid Pension Plan, which has both a defined benefit (DB) component and a defined contribution (DC) component, was introduced at Via Rail for newly hired employees in the Unifor bargaining unit through an interest arbitration award of this Arbitrator dated October 7, 2014. That is this same Hybrid

Pension Plan that Via Rail seeks, through this interest arbitration, to extend to newly hired employees in the TCRC bargaining unit.

Additionally, in 2015, Via Rail decided to introduce a DC pension plan for newly hired non-unionized employees, which was expected to start in 2016.

## 3. OVERVIEW OF THE DB PENSION PLAN FOR UNIONIZED EMPLOYEES CURRENTLY APPLICABLE TO ALL CURRENT AND NEW TCRC EMPLOYEES:

Much of the information concerning the details of Via Rail's pension plans is contained in the expert report that was prepared by Mercer on Via Rail's behalf for the purposes of this interest arbitration. It is dated October 6, 2015 and is entitled, Via Rail Canada Inc., Pension Plan for New Unionized Employees; Expert Report for Mediation/Arbitration on Pension Arrangements Between VIA and TCRC. It will be referred to herein as the "Mercer Report". The factual information contained in the Report is largely undisputed by the TCRC.

The details of the DB Pension Plan for Unionized employees are set out in the Mercer Report, in part, at pages 14-16, and include the following:

a) The retirement benefit under the DB Pension Plan is fixed. The DB Pension Plan provides an employee with a lifetime pension benefit at retirement based on a fixed formula that takes into account base salary and years of service. The benefits are based on the best average of 5 consecutive years of service. The employees know in advance the precise amount of pension benefit that will be received.

b) The pension per year of service is 1.7% of the average monthly pensionable earnings up to the yearly maximum pensionable earnings (YMPE) plus 2% of any excess.

c) There is a cap on the maximum allowable benefit which is as follows: $1,715 multiplied by the member's years of allowable service (35 years) which results in a maximum defined benefit of $60,025.00. The Mercer Report states at page 4 that, "this [cap] means that the Unionized Plan is in practice equivalent to a flat benefit pension plan for almost all TCRC-represented members because their earnings are …expected to be almost $130,000.00 per year in 2015…".

d) Indexation of the pension benefits commences following the third anniversary of payments at 50% of the CPI to a maximum increase in any year of 3%.

e) The ratio of employer/employee current service contributions has changed over the years. As set out in the Mercer Report at page 36, between 1998 and 2004 Via Rail took a contribution holiday (while making some improvements to the Pension Plan) and, accordingly, made no current or past service payments into the Pension Plan at that time. In 2005, Via Rail's contribution to current service payments moved to approximately two thirds of the employees' contributions.

f) Between 2006 and 2015, however, save for 2008, VIA's current service contributions moved to the position of exceeding the employees' contributions. Pursuant to a request from the Federal Government, in approximately 2013, Unifor and the TCRC agreed with Via Rail to increase the employee current service contributions each year up through 2017. As of 2017, the employee and employer current service contributions will have reached a 50%/50% cost sharing. As set out at page 14 of the Mercer Report, at that point, when they reach a 50%/50% split, employee contributions will constitute 8.2% of earnings up to the YMPE and 9% of any excess. In 2015, the employee contributions stood at 7% of earnings up to the YMPE and 8% of any excess.

g) It is noted that contributions are limited to the level of pensionable earnings providing the maximum pension allowed under the Unionized Plan. Maximum earnings were $93,790 in 2015, which generated a maximum annual employee contribution of $6,967 in 2015. Members do not contribute to the Unionized Plan on their pensionable earnings in excess of the maximum.

h) Additionally, as observed on page 17 of the Mercer Report, “employee contributions will also decrease gradually in the future when expressed as a percentage of earnings because [the] contribution formula continues to be applied only to the first $90,000-$100,000 of earnings …”

i) Members cease making contributions when they reach their maximum allowable service of 35 years.

j) Regarding investments for the DB Pension Plan, there is one pension investment fund for all plan beneficiaries.

k) Regarding special payments required from the employer, actuarial valuations are prepared periodically to compare the value of the benefits promised for service up to the valuation date versus the assets available in the Pension Plan fund to pay the benefits. Generally, the employer is required to make up any shortfall or deficit in order for the Pension Plan to be able to deliver the benefits promised. This adjustment is accomplished by the employer’s requirement to make special payments into the pension plan, which are also called past service contributions. Where there is a surplus, on the other hand, which occurred in the late 1990s and early 2000s, Via Rail's contributions were able to be reduced in what is typically called a contribution holiday, as described above.

l) Regarding the employees' retirement date, the normal retirement date is the last day of the month following the member's 65$^{th}$ birthday. Subject to the consent of the employer, however, an active member may postpone retirement beyond the normal retirement date.

m) Regarding early retirement, a member may choose to retire as early as age 55. If the sum of the number of years of allowable service and age is less than 85, the pension is actuarially reduced. If the sum reaches 85, the pension is not reduced. As set out on page 15 of the Mercer Report, the "current VIA consent policy [is that] the employer consent to an unreduced pension from age 55 with at least 85 points is granted for members terminating employment on or after age 55."

n) The net replacement ratio for TCRC-represented members retiring with an unreduced pension after 35 years of service is currently estimated at 71% when including CPP and OAS benefits, as set out on pages 17-18 of the Mercer Report. It is understood that this replacement ratio will decrease gradually in the future for TCRC employees as their earnings increase, in light of the fact that the maximum pension payable under the Pension Plan is fixed at $1,715 per year of service or $60,025 per year after 35 years.

## 4. OVERVIEW OF THE HYBRID PENSION PLAN VIA RAIL IS PROPOSING FOR NEWLY HIRED TCRC EMPLOYEES:

The Hybrid Pension Plan has two components: a DB component and a DC component. The details of this Plan are set out on pages 43-45 of the Mercer Report.

### a) Under the DB Component:

i) The monthly benefit is calculated at .75% (as opposed to 1.7% under the DB Pension Plan) of the final average monthly pensionable earnings multiplied by the employee's years of pensionable service.

ii) Only Via Rail contributes under the DB component; the employees do not. VIA's contributions may vary depending on the financial situation of the plan, as determined by the actuary.

iii) There is a cap on the maximum annual pension: $1,715 per years of service (maximum 35 years) or $60,025 in total per year.

iv) Indexation occurs after 3 years of retirement at 50% of the CPI to a maximum of 3% but, in contrast to the DB Pension Plan, only if the Plan is in a surplus financial condition.

v) The normal retirement date is 65 years. Retirement may occur as early as 55 years but, again, in contrast to the DB Pension Plan, retirement at age 55 is subject to actuarial reduction.

vi) Via Rail is responsible for managing the pension fund and bears the investment risk.

vii) RRSP contribution room for a given year is reduced by the value of the pension accrued in the previous year.

**b) <u>Under the DC Component:</u>**

i) The contributions by Via Rail and the employees are fixed, as follows:

+ employees will make a mandatory contribution of 4% of base salary through payroll deductions;

+ employees may further make optional contributions of 1%, 2% or 3% of base salary, which are changeable at any time;

+ the maximum period for employee contributions is 35 years;

+ Via Rail will contribute 50% of the employee's optional contributions;

+ VIA's contributions, however, cannot exceed the following maximums, based on the sum of age and years of service ("points"):

- .5% if less than 45 points
- 1.0% if 45 -59 points
- 1.5% if 60 points or more.

ii) The contributions are held in a separate investment account for each employee and accumulate with investment income over the course of the employee's career. The employee chooses how his/her pension savings are invested among a set of pre-selected funds made available. The employee monitors the fund according to personal needs and tolerance for risk. Accordingly, the investment risk is carried by the employee, not the employer, in contrast to the situation in the DB Pension Plan or the DB component of the Hybrid Pension Plan.

iii) It is the account balance on retirement that is used to generate the employee's retirement income. Accordingly, the retirement benefit received is not fixed. It is the contributions that are fixed.

iv) Normal retirement occurs at age 65. Early retirement may take place as early as 55 and employees then will receive the current value of their accumulated retirement savings.

iv) Indexation depends on arrangements made at retirement.

## 5. SUBMISSIONS OF VIA RAIL REGARDING THE PENSION PLAN:

### a. Regarding Comparability:

Regarding external comparators, Via Rail asserts that the evidence demonstrates that the trend is away from defined benefit pension plans, particularly in the private sector, including in the unionized environment, in order to reduce the level of employer risk. Regarding internal comparators, Via Rail emphasizes that it already has the Hybrid Pension Plan for Unifor employees hired after January 1, 2014, as well as an anticipated DC Pension Plan for new non unionized employees commencing in 2016.

Based on what Via Rail describes as the general trend away from defined benefit plans, particularly for new employees, as well as the fact that in Via Rail's largest bargaining unit, Unifor, new employees, since 2014, have been subject to the Hybrid Pension Plan, Via Rail contends that the criterion of comparability favours its position that new entrants into the TCRC bargaining unit should also be placed under the Hybrid Pension Plan.

### b. Regarding Economic Context And Demonstrated Need For Change:

It is the contention of Via Rail that given what it describes as the unsustainable risk associated with the current DB Pension Plan for Unionized Employees, for Via Rail to continue to apply the DB Pension Plan to new entrants does not constitute a viable option. Via Rail emphasizes that because the size of the DB Pension Plan is proportionately extremely large relative to the size of Via Rail and because of the volatility that is inherent in defined benefit pension plans, a number of external factors that are beyond Via Rail's control, such as interest rates, can influence assets and liability levels and quickly and unexpectedly cause a shortfall between pension liabilities and available pension assets. Via Rail contends that such an eventuality would then trigger the need for extraordinary mandatory employer contributions which would have the effect of jeopardizing the Corporation's and the Pension Plan's sustainability.

To emphasize the risk faced by Via Rail, reference was made to the Via Rail document dated October 6, 2015 entitled, Viability of Via Rail's Pension Plans. As observed by Via Rail, this document, at page 7, reveals that in 2014, the DB Pension Plan's total costs represented 16% of operating expenses and were forecasted to be 10% in 2015. In addition, as further set out on page 7, the pension plan's total costs relative to revenues were 29% in 2014 and were forecasted to be 18% in 2015. Via Rail further emphasizes that at page 4 of the Mercer Report it is noted that its contribution requirements to the DB Pension Plan "soared" to 47% of payroll in 2013 and 37% in 2014.

**c. Regarding Replication:**

Via Rail contends that the status quo respecting its DB Pension Plan was never an option and that introducing the Hybrid Pension Plan to new TCRC employees is vital in terms of both affordability and sustainability, especially since all other new employees hired at Via Rail are under a new pension landscape.

Counsel disputes the contention of Mr. Hackl, the vice-president of the Union, that obtaining the Hybrid Pension Plan for new TCRC employees would constitute a breakthrough. He notes that such might be argued if VIA was proposing a DC Pension Plan for the new hires but maintains that proposing a Hybrid Pension Plan is better described as a gradual step and is not a breakthrough. In this regard, counsel points to the decision of a board of interest arbitration chaired by Kevin Burkett in Air Canada and the CAW, decision dated September 16, 2011, where the Union's final offer of a hybrid pension plan, in contrast to the employer's final offer of a DC pension plan, was viewed as a mark of "gradualism" and not a "breakthrough".

## 6. TCRC'S SUBMISSIONS REGARDING THE PENSION PLAN:

### a. Regarding Comparability:

The TCRC contends that the closest comparators are the TCRC bargaining units at CN and CP.

### b. Regarding Economic Context and Demonstrated Need for Change:

The TCRC contends that Via Rail's DB Pension Plan for Unionized Employees is healthy and that VIA has failed to meet its burden of demonstrating a need for changing to a Hybrid Pension Plan for new employees.

**c. <u>Regarding Replication:</u>**

The TCRC maintains that it would never have agreed to have new entrants fall under the Hybrid Pension Plan. The TCRC claims that if VIA had persisted in its effort, it would have become a strike issue.

## 7. <u>DECISION OF THE BOARD REGARDING THE PENSION PLAN:</u>

In support of Via Rail's argument, significant reliance has been placed on the expert report that was prepared by Mercer on Via Rail's behalf for the purposes of this interest arbitration. As noted above, the Report is dated October 6, 2015 and is entitled, <u>Via Rail Canada Inc., Pension Plan for New Unionized Employees; Expert Report for Mediation/Arbitration on Pension Arrangements Between VIA and TCRC</u>, referred to herein as the "Mercer Report". Additional reliance has been placed by Via Rail on a report, also dated October 6, 2015, entitled, <u>Viability of Via Rail's Pension Plans</u>.

For its part, the TCRC obtained its own expert report prepared by PBI Actuarial Consultants Limited, in October of 2015, entitled <u>Pension Plan for Unionized Employees of VIA Rail Canada Inc.; Teamsters Canada Rail Conference,</u> referred to as "the PBI Report". The Union also draws significantly from the reports and documents submitted by Via Rail. As may be seen, there is less difference between the parties on the facts set out in these respective reports and documents than there is on the application and significance of those facts in respect of the assessment regarding which pension plan should be selected by this Board for newly hired TCRC employees.

We turn then to evaluate the standard criteria of comparability, economic context/demonstrated need, and replication.

## a. <u>Regarding Comparability:</u>

Regarding internal comparators, Via Rail points to the Unifor bargaining unit in which new employees hired after October of 2014 are subject to Via Rail's Hybrid Pension Plan, the same pension plan Via Rail seeks through this interest arbitration to extend to the TCRC new hires.

The Hybrid Pension Plan was awarded for Unifor employees hired at Via Rail after October 2014 through a decision of this Arbitrator dated October 7, 2014. The mandate of the arbitrator in that interest arbitration included the following stipulation: "The arbitrator shall consider, among other things, the impact on the current plan, the necessity, affordability and the sustainability of the plan proposed." As set out in the Via Rail and Unifor interest arbitration Award, Via Rail, just as in the instant matter, was seeking to place new hires in a Hybrid Pension Plan. Unifor's proposal, on the other hand, like the TCRC's position in the instant matter, was to keep its new hires in the current DB Pension Plan for Unionized Employees.

Of importance to the situation at hand, the Board is satisfied, upon review, that the circumstances involving the TCRC locomotive engineers is decidedly different from those relating to the Unifor employees with respect to what clearly was the deciding factor in the arbitrator's decision to adopt Via Rail's proposal to place newly hired Unifor employees in a Hybrid Pension Plan.

The pivotal factor persuading the arbitrator to adopt Via Rail's proposal for the Hybrid Pension Plan for newly hired Unifor employees was that the evidence established that the gross replacement ratio (pension plan only) for Unifor employees under the DB Pension Plan was 92% and that the net replacement ratio (inclusive of CPP and OAS as well as the pension plan) was 107%. The result of these replacement ratio figures, which the arbitrator described as "dysfunctional", was that under the DB Pension Plan the net replacement ratio of 107% revealed that the Unifor employees would be making more in retirement than they did as active employees.

In contrast, the evidence further revealed that if the new Unifor employees were placed in the proposed Hybrid Pension Plan, their gross replacement ratio would be 80% and their net replacement ratio would be 93%, which, while still high, was not considered by the arbitrator to be "dysfunctional". At pages 12-13, the arbitrator stated the following:

> I turn to consider the submissions of the parties. In doing so I find it difficult to avoid acknowledging, at the outset, what is arguably the dysfunctionality of the

> current pension system. Given current pension norms in Canada, which generally target [gross] replacement ratios to fall within the range of 50 to 70 percent, the 92 percent gross replacement ratio of the status quo plan, and the 107 percent net replacement ratio of that plan, are arguably dysfunctional. I find it difficult to reconcile the fact that, under the status quo, with a net replacement ratio of 107 percent, a retired employee will in fact earn more than he or she would do in active employment. Based on the submissions of the Corporation, there is also little or no reason to be concerned that the hybrid plan which the Corporation proposes would result in an unduly harsh effect. It is estimated that the gross replacement ratio for the proposed hybrid plan would be at 80 percent, while the net replacement ratio would be 93 percent, well above generally targeted replacement ratio rates.
>
> …
>
> In the result, and having substantial regard to what I consider to be the dysfunctional nature of the current plan, I find myself compelled to agree with the position of the Corporation, subject to certain qualifications [regarding indexation]. I accept that a hybrid plan based on the proposal of the Corporation is the preferable alternative from the standpoint of long term affordability and sustainability. …

The evidence reveals that for locomotive engineers under the current DB Pension Plan for Unionized Employees the replacement ratio profile is substantially different than it was for the Unifor employees. For TCRC employees, the replacement ratios are clearly neither excessive nor “dysfunctional.” It is noted in the Mercer Report, at pages 12-13, that, currently, for a locomotive engineer hired in 1980 and retiring at age 65 in 2015, the net replacement ratio is 71%. Moreover, because of the cap on the maximum pension under the DB Pension Plan, the Mercer Report further reveals that replacement ratios for TCRC employees will decrease over time. At page 46, the Mercer Report indicates that for a TCRC locomotive engineer hired in 2015 at age 30 with a salary of $115,000.00 and retiring at age 65 in 2050, the net replacement ratio, inclusive of CPP, OAS and additional employee retirement savings, would be 52%.

The factor which drives this difference in the respective replacement ratios between the Unifor employees and TCRC employees is that the TCRC locomotive engineers are more highly paid than the Unifor employees. The impact of the wage differential is that the $60,025 pension cap reduces the TCRC locomotive engineer's pension benefit (and therefore his/her replacement ratio) from what it would otherwise be without a cap, more deeply than it does for the Unifor employees. The significant result of these dynamics is that for the TCRC locomotive engineers, the replacement ratio levels under the current DB Pension Plan are neither excessive nor "dysfunctional". At page 7 of the TCRC PBI Expert Report, Section 3: Replacement Ratio, the following statement is made:

> Therefore the concern that the Current Plan provides excess replacement ratios is unfounded for TCRC members, as in fact the replacement ratios for TCRC members are 40% to 70% lower than for Unifor members.

In view of the clear distinction between the level of replacement ratios for the TCRC locomotive engineers, on the one hand, and the Unifor employees, on the other, and given that it was the excessive level of the replacement ratios for the Unifor employees under the DB Pension Plan that primarily caused the arbitrator to conclude that for the Unifor employees the DB Pension Plan was "dysfunctional", this Board concludes that even though the Unifor bargaining unit has a Hybrid Pension Plan for new hires, it is not a persuasive comparator for what conclusion should be reached in the instant matter involving the TCRC locomotive engineers. Moreover, the Board draws this conclusion notwithstanding that the Unifor bargaining unit brings in 72% of the new Via Rail employees.

Turning to external comparators, Via Rail points to the interest arbitration award in Air Canada and CAW, noted above, through which a hybrid pension plan was awarded for new hires in another situation involving public transportation. The circumstance in the Air Canada interest arbitration, however, was significantly different from that in the instant matter. In the Air Canada/CAW situation, the board was dealing with a final offer selection arbitration in which it was required to choose between either the hybrid pension plan for new employees proposed by the Union or the DC pension plan proposed by Air Canada. Accordingly, the board was not provided with the option of new employees remaining under the DB Pension Plan in place for current employees. Moreover, the financial circumstances of Air Canada, as set out in the decision, were arguably more pressing than those confronting Via Rail. Given the significant distinctions in circumstances, this Board is not prepared to conclude that the fact that a hybrid pension plan was awarded in the final offer section interest arbitration in Air Canada has significant persuasive value in the instant matter.

Further regarding external comparators, Via Rail relies on the trend, particularly in the private sector, away from DB pension plans. At page 39, the Mercer Report states that between 1999 and 2013, the DB coverage among workers in the private sector subject to pension plans dropped from 76% to 47%. Via Rail, however, is a public sector, not a private sector, employer and the evidence reveals that pension plans in general and DB plans in particular are significantly more prevalent in the public sector. As set out in the Mercer Report at page 39, 86% of workers in the public sector are covered by pension plans while in the private sector it is only 24%.

At page 41 of the Mercer Report, it is stated that among Via Rail's competitors in the transportation industry, only a few offer DB arrangements. The Report notes that in the airline industry, the "prevalence of DB pension plans is decreasing …". Moreover, further on page 41, the Mercer Report lists organizations for which the DB plans were converted to either hybrid pension plans or DC plans for some of their new employees, such as Bell Aliant, Air Canada, Lear Corporation, Brewers Retail, Labatts, Greyhound Canada and National Steel car, among others. The evidence presented to the Board, however, does not satisfy us that the work performed under these employers closely compares to that of the TCRC locomotive engineers at Via Rail, even if some of them involve the transportation of the public.

Instead, in the circumstances, the Board finds on the evidence that, just as for wages, CN and CP decidedly provide the best external comparators. First, it may be emphasized that Via Rail's DB Pension Plan for Unionized Employees was inherited from CN and CP. Second, the Board is satisfied that the work and working conditions of the employees in the TCRC bargaining unit, i.e. locomotive engineers and a few remaining traffic coordinators, are most closely aligned to those of the locomotive engineers at CN and CP because, as noted in respect of the selection of CN and CP as the best external comparators for establishing the rate for wage increases, they all operate trains on the three, and the only three, Class 1 Railways in Canada and cover a vast geographic area. The employees on these three railways hold the same classifications and are fully comparable.

The working conditions for and the skills required of the locomotive engineers at CN and CP compare closely to those of the Via Rail locomotive engineers, notwithstanding the comparably larger size of CN and CP. The Board is satisfied that a comparison between the work and working conditions for the locomotive engineers at these three railways is far closer than a comparison between the work and working conditions for the employees in the TCRC bargaining unit at Via Rail, on the one hand, and those of any of the external comparators advanced by Via Rail, on the other.

Moreover, the Board is further satisfied that the appropriateness of CN and CP as the most persuasive comparators is not diminished by the fact, relied on by

Via Rail, that CN and CP locomotive engineers operate trains carrying freight and commodities while Via Rail locomotive engineers operate trains carrying passengers. A comparison between the product being transported by CN and CP, on the one hand, and Via Rail, on the other, is not as persuasive as a comparison based on the related work and working conditions. Accordingly, the Board concludes that the fact that Via Rail transports passengers while CN and CP carry freight and/or commodities is not determinative in the selection of the appropriate external comparators for the TCRC bargaining unit at Via Rail.

Looking then to the pension plans at CN and CP for locomotive engineers, it is noted that they, inclusive of new employees, are under a DB pension plan and not a hybrid plan.

We turn now to assess the further criteria of the economic context and demonstrated need as well as replication.

## b. <u>**Demonstrated Need, Economic Context and Related Matters**</u>:

The status quo at Via Rail for the TCRC locomotive engineers is that new hires are included in the DB Pension Plan for Unionized Employees. As set out by a board of arbitration chaired by M.B. Keller in <u>Re City of Ottawa and ATU, Local 279</u>, *supra,* at page 6, "The party seeking a change to an existing provision to a collective agreement must demonstrate a need for the change. As well, the proposal must deal with the stated need."

Accordingly, given that the status quo is for newly hired employees to be placed under the DB Pension Plan for Unionized Employees applicable to all other employees in the TCRC bargaining unit, the burden will be on Via Rail to demonstrate both a need for Via Rail's proposed change to move newly hired employees to the Hybrid Pension Plan and that their proposed change will meet that need.

The Board is satisfied that Via Rail's proposal to extend the Hybrid Pension Plan to new hires in the TCRC bargaining unit is generally responsive to Via Rail's statement of its alleged need for a change in the pension plan status quo. The more pertinent question, however, is whether the evidence advanced by Via Rail establishes a need at this time for the change of placing newly hired TCRC locomotive engineers in the Hybrid Pension Plan.

**1) <u>Via Rail's Perspective Regarding Demonstrated Need, Economic Context and Related Matters</u>:**

Via Rail has advanced multiple factors to support its contention that retaining the status quo in its DB Pension Plan is no longer feasible and that it is essential for it to move new TCRC employees to the Hybrid Pension Plan in order to deal with affordability and sustainability challenges confronting Via Rail with its

DB Pension Plan and, in particular, to manage what it perceives to be the undue level of risk that is inherent in its DB Pension Plan.

The Mercer Report, at page 3, states that one of the significant difficulties for Via Rail is that the DB Pension Plan has substantial deficits relative to the financial capacity of the Corporation. The Mercer Report explains, more precisely, that Via Rail faces consequential challenges with its DB Pension Plan due to the large size of the pension plan compared to the relatively smaller size of Via Rail and the serious impact that then results from the effect of the inherent volatility that exists with defined benefit pension plans. At page 3, the Mercer Report states the following:

> Even if the [pension] plans do return to the breakeven point, due to the size of the plans relative to the size of VIA and the inherent volatility in DB plans, there will be in the future significant and unpredictable changes in financial position and employer contribution requirements. It is unlikely that plans can consistently maintain the breakeven point in equilibrium without further crippling lows from time to time, jeopardizing VIA's and the pension plans' sustainability; …

Similarly, at page 5, the Mercer Report comments that while volatility in the deficit of VIA's pension plans is typical for defined benefit plans, its impact is particularly challenging for Via Rail due to the large size of the pension plans compared to the relatively small size of the Corporation. By way of example, the Mercer Report sets out that the average ratio of VIA's pension liabilities divided by corporate revenues was 314% between 2007 to 2014. The Report observes by way of comparison that 90 percent of the organizations listed in the TSX Composite sponsoring defined benefit plans had a ratio of less than 60%. Moreover, Via Rail stresses, as stated in Viability of Via Rail's Pension Plans under the section, "Some Facts", that Via Rail's pension liabilities are four times its corporate revenues and ten times its corporate payroll.

As recorded at page 2 of the Mercer Report, Via Rail emphasizes that the level of risk inherent in its DB Pension Plan has increased significantly in the last decade, resulting in high and volatile costs for the plan sponsor. Via Rail maintains that the employer should not bear all of the increased risk alone and contends that the risk should be shared with the employees. Via Rail asserts that the requisite shift in risk would be achieved by adopting the Hybrid Pension Plan for newly hired employees.

On page 26 of the Mercer Report, it is stated that, "Over a three-year period from 2013 to 2015, a total of almost $140M of past service contributions had to be made by VIA to the Unionized Plan only, which represents a significant and unpredictable injection of cash in the pension plan compared to corporate revenues." Further on page 26, it is stated that, "The deficit of $151M as at December 31, 2014 has to be amortized over five years and results in minimum required special contributions of $30M for 2015 ($151M divided by 5)." Additionally, it is set out on page 26 that in 2014 the total employer pension plan contribution was $60.3 million ($13.6 million in employer current service contributions and $46.7 million in employer past service contributions).

Under a Via Rail document entitled Via Rail Canada; 1998-2019 Financial Narrative for TCRC Arbitration; October 22, 2015, the following is recorded on page 2 regarding Via Rail's rising pension costs:

> Despite VIA's implementation of several significant initiatives that have reduced pension costs by hundreds of millions of dollars, and the realization of above average rates of return on pension assets over the past two decades, VIA's pension costs climbed from zero or $1 million per year in the 1998-2004 period, then fluctuated between $4 million and $15 million per year in the next five years, but starting in 2010 they skyrocketed to $81 million by 2014.

As well, on page 2, this document discusses (1) the Government funding that Via Rail has in respect of its pension plan, (2) when that funding is slated to end and (3) the impact that that end is expected to have on Via Rail's operating deficit, as follows:

> Since fiscal year 2014 (April 1, 2014-March 31, 2015), VIA's base reference Government funding level has been reduced to $147 million per year, but VIA was given significant Government supplemental operating funding and special pension funding of up to $170 million per annum to meet its operating deficit and pension obligations, for a total of $317 million in 2014 alone.
>
> This additional Government operating and pension funding of about $0.5 billion is only available for the three fiscal years, starting in 2014 and ends in March 31, 2017. It is in addition to about $1.2 billion in capital

> funding provided by the Government of Canada between 2009 and 2016 for much needed capital investments.
>
> …
>
> Therefore, the operating deficit is forecast to grow by another $31 million per annum by 2019. At the same time, VIA's base funding reference level will return to $147 million in fiscal year 2016 (April 1, 2016 – March 31, 2017), leaving a substantial operating, pension and capital gap of about $200 million per year.

Both the Mercer Report and Viability of Via Rail's Pension Plans, under the sections, "Federal Guidance" and "Some Facts" state that the pressure on Via Rail's pension plans comes from a combination of the following factors: (i) low interest rates, (ii) the maturity of the plans which increases the ratio of retirees receiving benefits vs. active members contributing in, (iii) longer life expectancy and (iv) generous ancillary benefits such as unreduced early retirement, indexation and spouse protection.

In Viability of Via Rail's Pension Plans, under the section, "Managing Long-Term Sustainability" it is noted that,

> More than ever, VIA has to manage long term sustainability. Actions must be taken now to rebalance costs and reduce risks for the future.

The manner in which Via Rail proposes to meet the stated objective of rebalancing its pension plan costs and reducing its risks is to focus on current employees under the DB Pension Plan to reduce its costs and to target new employees to reduce its risks. The rebalancing of pension plan costs is currently underway in the DB

Pension Plan through an agreed upon reallocation of current service costs between employees and Via Rail from what was a 41%-59% employee-employer split in 2014 to an anticipated 50%- 50% employee-employer split in 2017. This revised split has already been agreed to by the TCRC and is not in issue in this interest arbitration. What is in issue, however, is Via Rail's proposal for sharing its pension plan risk by moving newly hired TCRC employees to the Hybrid Pension Plan, given that under the DC component of that plan the employees, not Via Rail, will bear the risk of investment.

Regarding the extent to which Via Rail's proposal to move newly hired TCRC employees to the Hybrid Pension Plan will meet its stated need, the Mercer Report makes the following forecast at page 49:

> Over time, [under the Hybrid Pension Plan] the ratio of DB liabilities to corporate revenues, and other measures of corporate risk, will gradually reduce, putting the Corporation in a better position to manage risk and volatility of DB plans. Although the DB component of the hybrid plan will be smaller than the current DB plan, the DC component will bridge the gap to some extent for future employees.

Further demonstrating the responsiveness of the Hybrid Pension Plan proposal for new employees to the problems caused to VIA by continuing the DB Pension Plan for new employees, the Mercer Report states, at page 50, that it is anticipated that, "As new hires join the hybrid design, the DB liabilities will be lower than if the current situation was to continue … As a result, over time, risk will gradually reduce, putting the Corporation and the Unionized Plan in a more sustainable position."

A summary of some of the anticipated benefits of extending the Hybrid Pension Plan to new TCRC hires is set out on page 6 of the of the Mercer Report, as follows:

> Implementing a hybrid design for new hires is a milestone to ensure the affordability and sustainability of VIA and the Unionized Plan, providing a better stability of contributions and a better capacity to manage pension DB liabilities and pension risks.

Regarding the timing of moving to the Hybrid Pension Plan for new employees, the Mercier Report states, at page 50, that "now is a good time to extend the hybrid design to new TCRC hires". At page 12, the Mercer Report explains more precisely that,

> 70% of current active TCRC members are already eligible to retirement or will become eligible to retirement in the next five years. This will result in a lot of retirements in the short-term. During this period, many new employees will have to be hired to replace these terminating employees.

The Mercer report estimates that 190 TCRC members will retire in the next 5 years and that approximately 160 new TCRC members will be hired and will join the plan. At page 13, the Mercer Report states that this situation is "a window of opportunity that the Company must take advantage of now."

To further endorse the appropriateness of its Hybrid Pension Plan proposal for new hires, Via Rail relies on the Mercer Report to contend that the new TCRC locomotive engineers will be better off under the Hybrid Pension Plan than the DB Pension Plan in respect of the replacement ratio for retired employees. The Mercer Report states, at page 46, that the replacement ratio for a TCRC employee hired in 2015 at age 30 with a salary of $115,000 and retiring at age 65 in 2050 would, under the current DB Pension Plan for Unionized Employees, be 52% (inclusive of CPP, OAS and additional employee retirement savings), while it would be 67% under the Hybrid Plan, assuming a pre-retirement income of $245,000 the year before retirement in 2050. At page 47, the Mercer Report demonstrates how that same employee who retires at age 60, instead of age 65, would still have a better replacement ratio under the Hybrid Pension Plan in that it would be 58% compared to 51% under the current DB Pension Plan for Unionized Employees. The Mercer Report explains the benefit to new TCRC employees of moving under the Hybrid Pension Plan as follows at page 6:

> Also, for TCRC-represented employees, the hybrid design allows [them] to maintain a significant replacement ratio in the future because the maximum DB pension will only affect members if their salary is in excess of $228,000. The pension from the DB component of the hybrid design will be almost as generous as the current design due to the effect of the maximum pension for these employees. It will be funded only by VIA's contributions and the risk will be supported only by VIA. Employee contributions will be directed to the DC component of the hybrid design and will help, together with some matching from VIA, accumulate additional retirement income. We estimate that the projected replacement ratio for a new employee hired at age 30 in 2015 and retiring from VIA

> in 2050 at age 65 after 35 years of service will increase to 67%, compared to 52% in 35 years from now under the current design.

It should be noted that if that same employee retires at age 55, the replacement ratio would be better under the current DB Pension Plan than under the Hybrid Pension Plan, as is set out on page 9 of the PBI Report prepared for the TCRC.

The facts and submissions set out above, which generally are not disputed by the Union, highlight Via Rail's perspective of its need to have newly hired TCRC employees placed under the Hybrid Pension Plan.

**2) <u>TCRC's Perspective Regarding Demonstrated Need, Economic Context and Related Matters</u>:**

Additional facts, however, which also appear not to be in particular dispute, are emphasized by the TCRC to demonstrate that the need for Via Rail to turn to the Hybrid Pension Plan for newly hired TCRC employees in order to reduce its pension plan risk is not necessary for the sustainability or affordability of the DB Pension Plan.

In Section 2 of the PBI Report, "Viability of the Current Plan", the importance of the going-concern valuation is set out, as follows:

> Long term sustainability of a pension plan is measured on a going-concern basis. The going-concern basis assumes that plan will continue indefinitely (i.e. for the long term) and is based on long term actuarial

> assumptions. The primary purposes of the going-concern valuation are to determine the funded position of the plan and the level of contributions required to ensure benefits are properly funded when members retire.

Of importance to the position of the TCRC that the DB Pension Plan is currently performing well, the TCRC emphasizes the following assessment of the going-concern valuation for the DB Pension Plan for Unionized Employees, which also appears in Section 2 of the PBI Report, as follows:

> In the Current Plan, as at December 31, 2013, there was a going-concern funding excess and the funded ratio was 103% using a smoothed asset value and, on a market value basis, 108%. In 2014, like in many pension plans, assets performed well to further improve the going-concern financial position to a funded ratio of 108% using a smoothed asset value and 116% using the market value of assets.

To summarize, the PBI Report states in Section 4: “Other Comments” regarding the above funded ratios that, “By any measure, this is a very healthy going-concern funded ratio.”

The going-concern valuation is also referred to at pages 23 and 24 of the Mercer Report and reveals on page 24 a going-concern excess or surplus of $116 million as at December 31, 2014. Moreover, at page 25, the Mercer Report sets out a solvency ratio of 95% as at December 31, 2014, which is also very good.

A number of other types of measurement regarding Via Rail's pension costs and contributions paint an interesting picture.

We look first at the current service contribution levels and projections. As set out in the Via Rail document, Viability of Via Rail's Pension Plans under "Current Status - DB Pension Plan for Unionized Employees (cont'd)", before 2012, the employees' contribution levels decreased from 54% to 35% while Via Rail's contribution levels increased from 46% to 65%. In 2012, however, the tide turned. Starting in 2012, the employees' contribution levels increased, and will continue to increase through 2017, while, at the same time, Via Rail's contribution levels decreased, and will continue to decrease, to the point where by 2017, as mandated by the federal government, the current service costs will be shared 50%/50% by the employees and Via Rail. To be more precise, the alteration in the employee/Via Rail current service contribution ratios between 2012 and 2017 have been, and will be, as follows: 2012: 34%/66%; 2013: 37%/63%; 2014: 41%/59%; 2015: 43%/56%; 2016: 47%/53% and 2017: 50%/50%. Between 2012 and 2017, Via Rail's current service contribution levels went steadily down and the employees' current service contribution levels went steadily up. In 2017 they will settle at a 50%/50% allocation.

When looking at the estimated employer current service costs as a percentage of total earnings, as set out in the PBI Report under Section 2: "Viability of the Current Plan", it is shown in both a closed group and an open group that the Via Rail percentage is projected to decline steadily. For the closed group, the decline in the estimated employer current service costs as a percentage of total earnings is projected to be as follows: 2015: 7.3%; 2016: 6.8%; 2017: 6.4%; 2018: 6.1% and 2019: 5.9%. For the open group, the decline in the estimated employer current service costs as a percentage of total earnings is projected to be the following: 2015: 7.3%, 2016: 6.0%; 2017: 4.8%; 2018: 4.0% and 2019: 3.3%. With the open group, the employer costs as a percentage of earnings are lower because it includes new entrants, which the PBI Report observes demonstrates the positive impact for both the Current Plan and for the employer of keeping the Current Plan open to new members.

Similarly, the PBI Report, in the same Section 2, sets out the steady decrease in Via Rail's current service costs as a percentage of pensionable earnings as follows: for a closed group it is 2015: 12.7%; 2016: 12.4%; 2017: 12.3%; 2018: 12.1% and 2019: 12.1%. For the open group it is 2015:12.7%, 2016: 10.3%; 2017: 8.3%; 2018: 6.7% and 2019: 5.6%.

Via Rail highlighted the high level of its pension plan total costs as compared to its operating expenses. The evidence reveals, as set out in its document, <u>Viability of Via Rail's Pension Plans,</u> under "Federal Guidance", however, that while that percentage increased between 2010 and 2013, since 2013 it has steadily declined as follows: 2013: 18%; 2014: 16%; and 2015: 10%.

Similarly, VIA's pension plan costs as compared to its total revenues have decreased steadily since 2013, as follows: 2013: 33%; 2014: 29%; and 2015: 18%.

To demonstrate the volatility of the DB Plan, Via Rail highlighted, among numerous other factors, the extent of its requisite special past service contributions. The chart set out in the Mercer Report on page 36 reveals, however, that between 1998 and 2004 Via Rail paid neither current service contributions nor past service contributions and, instead, took a contribution holiday. The chart further reveals that between 2005 and 2009, while Via Rail did pay current service costs, it was not required to pay any special past service contributions. The special past service contributions started, according to the chart, in 2010 and rose steadily through 2013. From 2013 through 2015, however, the special past service contributions declined steadily, as is clearly shown on the chart.

The PBI Report concludes at page 1 that, "The current [DB Pension Plan] is sustainable for new TCRC hires." At page 15, under "Section 5: Conclusions", it states that, "… the Current Plan is sustainable and better supports the retirement needs of the TCRC members. It provides reasonable (not excessive) benefits at a reasonable (not excessive) cost to the Employer."

The TCRC further points to an article dated October 27, 2015, which, according to the TCRC, highlights the expectation of a bright future for Via Rail. It states the expectation of the CEO of Via Rail that Via Rail expects to add 100,000 passengers in 2015, due to improved customer service and additional cars and stops in busy times. As well, the article records that, “It is the first time since the 2008 financial crisis the money-losing company has seen a rise in both revenue and ridership.”

### 3) **<u>THE BOARD’S EVALUATION Regarding Demonstrated Need, Economic Context and Related Matters</u>**:

The Board has carefully reviewed the submissions of the parties as well as the documentation advanced by the parties, inclusive of their respective expert reports that are largely uncontradicted by either party. Having done so, the Board is compelled to conclude that while there is a certain level of volatility and unpredictability regarding employer costs and contribution levels in any defined benefit plan and while employer risk is an inevitable feature of a defined benefit plan, the evidence establishes that, at this point, although Via Rail would prefer to shift some of its risks under the DB Pension Plan to the new TCRC employees who would fall under the proposed Hybrid Pension Plan, it has not demonstrated a sufficient need to do so to justify a change from the status quo.

A review of the evidence satisfies the Board that the affordability and sustainability of the DB Pension Plan for Unionized employees, as it stands, that is, inclusive of new TCRC entrants, is not in current or foreseeable crisis in respect of the time period relevant to this interest arbitration. Moreover, while Via Rail bears the risk under the Current Plan, the evidence has not persuaded the Board that the level of that risk, at this time, is of such a level that it demonstrates a need for change at this time.

To be more particular, several factors have persuaded the Board to this conclusion including, among others, the uncontradicted evidence, as set out in the PBI Report in Section 2: "Viability of the Current Plan", which puts forward the following positive evaluation of the Pension Plan:

> In the Current Plan, as at December 31, 2013, there was a going-concern funding excess and the funded ratio was 103% using a smoothed asset value and, on a market value basis, 108%. In 2014, like in many pension plans, assets performed well to further improve the going-concern financial position to a funded ratio of 108% using a smoothed asset value and 116% using the market value of assets.

A similarly optimistic assessment of the health of the Pension Plan is set out at page 13 of the PBI Report, (Section 4: Other Comments), where it is stated that the "Current Plan had $117 million in deferred investment gains (i.e. excess of market value over smoothed value) as at December 31, 2014". Further on the same page, it is observed that, "The funded ratio of the Current Plan as at December 31, 2014 assuming market value of assets would have been 116% compared to the funded ratio of 108% using a smoothed value of assets." As was then observed in the PBI Report,

> By any measure, this is a very healthy going concern funded ratio.

Moreover, no evidence was presented to the Board to demonstrate that the state of the Pension Plan or the Employer's cost in respect of the DB Pension Plan have worsened since then. In fact the opposite is revealed by the evidence. As set out above, in Section 2 of the PBI Report, the charts reveal that the Employer's current service costs as a percentage of both total earnings and pensionable earnings have been decreasing steadily since 2015 and are projected to continue to do so through 2019.

Additionally, as set out above, the document, Viability of Via Rail's Pension Plans, under the section, "Federal Guidance", demonstrates that since 2013 the level of Via Rail's pension plan total costs as compared to its operating expenses has steadily declined, as have its pension plan costs as compared to its total revenues.

The Board is further mindful that the evidence demonstrates that the past service contributions that Via Rail has been required to pay have decreased steadily since 2013 and that the only time between 1996 and 2015 (the expanse of time set out in the Mercer Report at page 36) that they have constituted an increasing Employer contribution was between 2010 and 2013.

Of additional benefit to Via Rail's financial circumstances in respect of the pension plan is that the current service costs for Via Rail are annually decreasing and will continue to annually decrease through 2017 when Via Rail and the employees under the DB Pension Plan will reach a 50%/50% contribution level for current service costs.

Moreover, the risk Via Rail bears in respect of employee benefits under the DB Pension Plan is reduced for TCRC members because the annual benefit cap of $60,025 contained in the terms of the DB Pension Plan hold the benefits payable to the relatively high TCRC wage earners at a substantially lower level than they would be without the cap. Currently the TCRC wages are estimated to be between approximately $113,000 and $130,000 and by 2050 they are estimated to be approximately $245,000, as revealed on pages 4, 18, 45 and 46 of the Mercer Report. Notwithstanding these current and projected high wage levels, the cap maintains the benefit at $60,025 annually.

It is not unnatural that an employer would prefer to share the risk associated with the investment of assets and the requirement to provide a defined benefit with employees under a DC pension plan or, as in the instant matter, under the DC component of the Hybrid Pension Plan, in order to reduce the volatility and unpredictability associated with a DB pension plan.

Of critical importance to the assessment of the respective pension plan proposals of the parties, however, the Board has concluded that the evidence presented does not establish a sufficient need for Via Rail to lower its risk under the current DB Pension Plan at this time to justify altering the status quo by placing new entrants under the Hybrid Pension Plan instead of keeping them where they are in the DB Pension Plan for Unionized Employees. As fully and clearly set out above, multiple forms of measurement show that the health of the Pension Plan itself is in a positive state. As well, the evidence clearly demonstrates that Via Rail's costs under the DB Pension Plan, as calculated through the multiple forms of measurement referred to above, have been steadily improving over the past few years and are projected to continue to do so over the time frame that is relevant to this interest arbitration. In fact, it is arguable, as set out at page 6 of the PBI Report, that bringing new entrants into the DB Pension Plan will have a positive impact on employer costs: "These calculations illustrate that keeping the current plan open to new entrants has a positive impact on the plan and the employer cost under the plan."

Additionally, the Board is unable to find persuasive Via Rail's submission that new TCRC entrants will be better off under the Hybrid Pension Plan. First and most compellingly, the TCRC does not agree with that assertion. While the evidence reveals that if a TCRC employee hired at age 30 in 2015 retires at either age 65 or 60, the replacement ratio for that employee would be better under the Hybrid Pension Plan than under the DB Pension Plan, the evidence further reveals that such is not the case for a TCRC employee who chooses to retire at age 55. Moreover, the evidence presented satisfies the Board that a good portion of TCRC employees tend to want to retire earlier than age 60 or 65 and prefer to take their retirement at age 55 instead. At page 12 of the PBI Report it is stated that,

> …it is far more likely based on actual plan experience that such a member [a TCRC member] would retire after attaining age 55 and 35 years of service, and

> clearly the current plan is significantly better than the proposed plan under this more likely scenario.

Of pertinence to the TCRC's concern is the fact that under the DB Pension Plan, a TCRC employee is able to retire with an unreduced pension at age 55 if he/she has 85 points measured by a total of age and allowable service. As set out on page 15 of the Mercer Report, "As per current VIA consent policy, the employer consent to an unreduced pension from age 55 with at least 85 points is granted for members terminating employment on or after age 55."

Of substantial importance to the TCRC's evaluation of the benefit to TCRC employees under the current DB Pension Plan versus under the proposed Hybrid Pension Plan is the fact that under the Hybrid Pension Plan, TCRC employees who choose to retire at age 55 are given a reduced pension, not an unreduced pension, as occurs under the DB Pension Plan. Since the evidence reveals that TCRC employees tend to prefer to retire at age 55 and 35 years, the ability for them to receive an unreduced pension at that time under the DB Pension Plan instead of a reduced pension, as would be the case under the Hybrid Pension Plan, would provide a significant basis for a preference for the DB Pension Plan. This important distinction between the two plans is clearly set out on page 44 of the Mercer Report.

An additional benefit for its employees under the current DB Pension Plan that is emphasized by the TCRC is that employees receive indexation based on

50% of the increase in CPI after the third anniversary of the commencement of benefits. In contrast, under the Hybrid Pension Plan, as referred to on page 44 of the Mercer Report, while indexation is provided on the DB component of the Hybrid Pension Plan, indexation on the DC component benefits has not been secured and is stated to, "[depend] on arrangements made at retirement." Even under the DB component, indexation is provided, "only if the plan is in a surplus financial condition". Under the DB Pension Plan, indexation is not subject to a similar caveat.

The TCRC further observes that its members highly value the fact that under the DB Pension Plan investments and mortality risks are pooled in a large investment fund applicable to all members, such that the fund is far more able to withstand the ups and downs of the market and is managed by professional experts. In contrast, under the DC component of the Hybrid Pension Plan, each employee holds his or her own individual fund and is responsible for monitoring and adjusting the individual investments according to his or her own personal needs and tolerance for risk, as is set out on page 43 of the Mercer Report. The TCRC emphasizes that what its members want is certainty in their pension benefits, not projections.

Given the more favourable terms of retirement for a TCRC employee retiring at age 55 after 30 or 35 years of allowable service under the current DB Pension Plan as opposed to under the proposed Hybrid Pension Plan (as seen in the areas of the replacement ratios, full as opposed to reduced pension benefits and guaranteed indexation) and given that the evidence reveals that being able to retire as early as age 55 is of substantial importance to the typical TCRC employee, the Board is unable adopt the assertion of Via Rail that new TCRC entrants will be better off under the Hybrid Pension Plan than under the current DB Pension Plan, notwithstanding that the replacement ratio may be better for an employee retiring at age 60 or 65 years of age.

In the result, then, with respect to the criteria of demonstrated need and economic context, the Board concludes, for the reasons set out, that Via Rail has not advanced sufficient evidence to demonstrate to the Board that it has a sufficient need to change the status quo at this time.

While Via Rail, supported by the Mercer Report, maintains that it would be advantageous to have all new employees, that is Unifor and TCRC new employees, under the same pension plan, that consideration, standing on its own, does not constitute a compelling reason to alter the status quo. No persuasive explanation has been advanced to this Board to suggest that all new entrants, Unifor and TCRC alike, need to be included under the same pension plan. The Unifor bargaining unit is by far the largest bargaining unit and there has been no evidence to suggest that putting the two groups of employees under the same pension plan would be necessary for the ongoing health of either pension plan, and this is particularly so given the well established differences between the two employee groups.

Moreover, while from Via Rail's perspective, it may well be a favourable time for Via Rail to make a change in the status quo and place new entrants under the Hybrid Pension Plan, given the anticipated elevated levels of retirement that are expected to occur over the next five years, along with the related new hirings that will then occur, and while, accordingly, moving new entrant to the Hybrid Pension Plan might properly be described as a "window of opportunity" as set out on pages 12-13 of the Mercer Report, the Board is compelled to conclude that this opportunity does not establish or demonstrate, standing on its own, the need to alter the status quo at this time.

## c. Replication:

The well accepted criterion of replication is regularly applied by boards of interest arbitration to attempt to find the bargain or agreement that most closely resembles the bargain that would have been struck if free collective bargaining had been able to continue to its natural conclusion.

It is generally understood that neither party should expect to achieve a breakthrough at interest arbitration. Arbitrator Burkett in Air Canada, *supra,* stated this principle in the following manner at page 46:

> It follows that absent compelling evidence, an interest arbitrator will be loath to award ‘breakthrough’ items. The awarding of a DC plan for new hires into this bargaining unit where all members of the bargaining unit have previously been part of the Employer’s DB pension plan would constitute a major breakthrough.

The TCRC contends that to introduce a DC component to the pension plan at Via Rail where the existing pension plan for TCRC employees has been strictly a DB Pension Plan would be a breakthrough and would constitute a significant deviation from the norm. The TCRC asserts that, in the bargaining process, moving new TCRC entrants to the Hybrid Pension Plan would be viewed as a major concession. The TCRC points out that as was stated by Arbitrator Kaplan in a CP Award, “Agreeing to a DC plan when the status quo is DB is the Holy Grail of union concessions in a mature collective bargaining relationship…” and “The voluntary agreement between Air Canada and CALDA for the New Hire DC Plan was a breakthrough for Air Canada.”

In the instant matter, it is understood that the pension plan is of utmost importance to both parties. Each, for its own reasons, has placed the highest priority on its pension plan position. Given the Board’s finding that CN and CP are the most appropriate comparators, given the Board’s conclusion that Via Rail has not demonstrated a need to alter the status quo at this time and given that the TCRC strenuously wants to preserve for its new entrants the advantages it deems exist under the current DB Pension Plan over the proposed Hybrid Pension Plan in such areas as replacement ratios, investment risk, benefit levels for employees wanting to retire at age 55 as well as preferable indexation, it is arguable that the TCRC would have persisted strenuously if free collective bargaining had continued. Mr. Hackl, the National Vice President of the TCRC, stated that if the issue came to an impasse it would trigger a national strike.

Equally, however, it is clear that Via Rail is deeply concerned about the long-term impact of the inevitable volatility and unpredictability of the DB Pension Plan and is highly focused on taking steps to bring those factors under control so that, going forward, it may attain greater control over its pension costs and risks. Via Rail, too, may well have persisted with similar strength and would not have agreed to retain the status quo if collective bargaining had continued uninterrupted to its natural conclusion.

On balance, the Board is satisfied, however, that in free collective bargaining, the parties would not have agreed upon Via Rail's Hybrid Pension Plan proposal in its current form.

At this time, Via Rail is in the process of achieving a 50%/50% spilt in its current service costs and will have done so by year 2017. The employees' contribution levels are rising annually toward the 50% level and the employer's contribution levels are decreasing to the 50% level. This is a significant adjustment for the employees. What advantage they might be receiving in return for that increase in their current service contribution levels has not been clearly spelled out.

In this matter of pensions that is so vital to the interests of both parties, it is the opinion of the Board that it is an issue that, in all likelihood, will best be resolved at the bargaining table through uninterrupted negotiations where, step by step, hard fought adjustments can be made that, in the end, will best achieve the compromise that will embody an agreement that both parties can live with.

At this point, the Board is satisfied that the Hybrid Pension Plan proposal put forward by Via Rail in its current form is not the agreement that the parties would likely have come to had the bargaining continued uninterrupted, particularly given the Board's findings that the best comparators are CN and CP, which each have DB pension plans for their TCRC employees, and that Via Rail has not demonstrated a need for a change from the status quo at this time. Moreover, while the Board acknowledges the benefits to the TCRC employees under the proposed Hybrid Pension Plan that were emphasized by Via Rail, it is equally clear that in multiple ways that are vital to the interests of the TCRC employees, such as being able to retire at age 55 years, their interests are better served under the DB Pension Plan than they would be under the Hybrid Pension Plan.

## d. THE BOARD'S CONCLUSION REGARDING THE PENSION PLAN:

In the result, for the reasons set out, and having regard to an application of the criteria of comparability, demonstrated need, economic context and replication, along with other considerations, the Board concludes that Via Rail has not established a basis for making a change to the status quo under which newly hired employees are included in the DB Pension Plan for Unionized Employees. Accordingly, the Board declines to adopt Via Rail's proposal for placing newly hired TCRC employees in the Hybrid Pension Plan.

## -D-

## SUMMARY

Having regard to the foregoing, for the reasons set out, the Board concludes as follows: (1) In respect of the wage increases, the Board adopts the proposal of the TCRC with full retroactive application to both current and former employees. Accordingly, the TCRC employees will receive wage increases of 2.5% for 2015, 3% for 2016 and 3% for 2017. (2) In respect of the pension plan, the Board declines to adopt Via Rail's proposal to change the status quo for new entrants to the TCRC bargaining unit and declines, thereby, to place newly hired TCRC employees in the Hybrid Pension Plan. Instead, the Board adopts the proposal of the TCRC to retain the status quo whereby new entrants will remain in the DB Pension Plan for Unionized Employees.

The Board remains seized in the event that a dispute arises regarding the application or implementation of this award.

Dated in Ottawa this 31st day of October, 2016.

*"Michel G. Picher"*
Michel G. Picher – Chair

I concur. *"Harold Caley"*
Harold Caley – TCRC Nominee

I dissent for reasons set out below. *"Pierre Lamarre"*
Pierre Lamarre – Via Rail Nominee

**DISSENT AWARD OF**
**VIA RAIL CANADA NOMINEE,**
**PIERRE LAMARRE**

The reasons why I am constrained to dissent may be briefly stated.

## A. WAGE INCREASES

With all due respect for the contrary opinion, I must register my strong disagreement as to the use of CN and CP as appropriate comparators.

In my view, the proper comparators must be competitive employers providing similar services in similar geographical areas. Proper comparators should thus consist of commuter transport either by trains, planes or buses who are in direct competition with Via Rail.

There is little in common with the business of VIA and those of CN and/or CP as the latter are essentially involved in the transport of bulk commodities and merchandised freight and certainly not passenger transport.

In my opinion, Go-Transit (Bombardier Transportation-North America), whose train operators are also represented by TCRC, constitutes the most relevant comparator as this employer's operations are, in all important aspects, very similar to those of VIA.

For the reasons set out above, I would have set the wage increase for each of the three-year term of the Collective Bargaining Agreement as follows: 2%, starting January 1st, 2015, 2% as of January 1st, 2016 and 2.75% as of January 1st, 2017.

## B. THE PENSION PLAN

As far as the pension plan issue is concerned, we are in agreement that the Chair properly identified the principles which must be followed for determining interest arbitration, namely and in no particular order, demonstrated need, comparability, replication, the economic context and total compensation. Unfortunately, this is the extent to which we are in agreement.

**a. <u>Demonstrated Need</u>**

In our opinion, the evidence presented by VIA Rail leads to the unescapable conclusion that, due to the associated risk, the status quo on the current defined benefit plan does not constitute a viable option. The evidence has convinced me that the size of the plan is proportionately extremely large relative to the size of VIA Rail and, because of the inherent volatility in defined benefit plans, a host of external factors beyond VIA Rail's control influences assets and liabilities and can quickly and unexpectedly create a shortfall between pension liabilities and available pension assets. This would trigger the need for extraordinary mandatory company contributions which would have the effect of jeopardizing the corporation's and the pension plan's sustainability.

**b. <u>Comparability</u>**

Both the external and internal comparators favor Via Rail's hybrid design pension plan proposal.

### i) External Comparators

With respect to external comparators, including VIA Rail's competitors, un-contradicted evidence has been led to show that the trend away from defined benefit plans is well under way in Canada and globally, especially in the private sector.

This trend away from defined benefit plans is also occurring in the unionized environment.

Factors explaining this trend are set out in VIA Rail's expert report. These include stringent funding rules, low interest rates, volatile equity markets and greater longevity.

### ii) Internal comparators

With respect to internal comparators, VIA has introduced a hybrid design plan for Unifor represented employees hired on or after January 1st, 2014[1]. It is this exact same hybrid design that VIA wishes to extend to TCRC represented employees hired on or after January 1, 2015.

[1] *VIA Rail and Unifor*, decision by arbitrator Michel G. Picher dated October 7th, 2014

Also, it is the intention of VIA that, to be applicable from 2016, new non-unionized employees of VIA will no longer participate in a defined benefit plan but, going forward, will participate in a straight defined contribution pension plan.

**c. <u>Replication</u>**

In view of various factors facing VIA, including its overall financial circumstances its need to reduce volatility, risks and ensure affordability hence pension sustainability, all of which have been confirmed by the evidence, I am satisfied that VIA Rail's proposal to extend its unionized hybrid pension plan to new TCRC represented employees, while leaving all currently employed TCRC employees and retirees in the defined benefit pension plan, is something that, standing on its own, may well have been achieved in a freely negotiated replacement collective agreement.

I have great difficulty in imagining that TCRC would engage in any significant work stoppage in opposition to the introduction of a hybrid pension plan which in no way affects the current TCRC members and who are also the only ones eventually asked to vote for union action in the circumstances.

> The statement by TCRC witness Roland Hackl that the introduction of the hybrid pension plan for the unborn "**...would inevitably trigger a national strike...**" is therefore, to say the least, questionable.

For these reasons, I am readily satisfied that it would have been appropriate to extend VIA Rail's existing unionized hybrid pension plan to TCRC represented employees hired on or after January 1, 2015.

The whole respectfully submitted.

Dated at Montreal, Quebec this 31st day of October, 2016.

"Pierre Lamarre"

Pierre Lamarre – Via Rail Nominee