

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2112

Heard at Montreal, Wednesday, 13 February 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

An employee's entitlement to a higher rate of pay while on maintenance of earnings when he works less than 40 hours in a week.

JOINT STATEMENT OF ISSUE:

On January 15, 1990, Mr. Angelo Cacciotti became entitled to maintenance of earnings by virtue of Article E.1 of the Special Agreement. He was entitled to an incumbency rate of 40 hours at the Senior Station Attendant (SSA) rate of pay (\$558.77 per week). Effective January 15, 1990, Mr. Cacciotti was awarded a regular part-time assignment of 28 hours per week as a Counter Sales Agent (CSA) with a rate of pay of \$636.02 per week.

The Brotherhood contends that Mr. Cacciotti should be paid 28 hours at the CSA rate and twelve hours at the SSA rate for each work week, a total of \$621.56 per week.

The Corporation disagrees. The Corporation believes that the dollar value of Mr. Cacciotti's maintenance of earnings protection pursuant to Article E.1 was correctly established at \$558.77 per week and that any wages earned up to \$558.77 in any given week, whether they are earned on a higher rated position or at lower rate of pay are to be considered in the calculation of his maintenance of earnings protection.

FOR THE BROTHERHOOD:

(SGD.) A. CERILLI  
for: NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) M. ST-JULES  
for: DEPARTMENT DIRECTOR, LABOUR  
RELATIONS

There appeared on behalf of the Corporation:

R. Wesley	-- Senior Officer, Labour Relations, Montreal
M. St-Jules	-- Senior Negotiator & Advisor, Labour Relations, Montreal
C. Pollock	-- Senior Officer, Labour Relations,

	Montreal
D. Fisher	-- Senior Officer, Labour Relations, Montreal
J. Kish	-- Senior Advisor, Labour Relations, Montreal
D. Wolk	-- Manager Customer Services, Montreal
M. M. Boyle	-- Observer
D. David	-- Observer

And on behalf of the Brotherhood:

A. Cerilli	-- Regional Vice-President, Winnipeg
T. McGrath	-- National Vice-President, Ottawa
G. Murray	-- Regional Vice-President, Moncton
R. J. Stevens	-- Regional Vice-President, Toronto
R. Moreau	-- Regional Vice-President, Montreal
J. Brown	-- Representative, Montreal
A. Della Penna	-- Local Chairperson, Montreal
F. Bisson	-- Local Chairperson, Montreal
J-J Journault	-- Local President, Montreal
K. Williams	-- Secretary, Local Grievance Committee, Winnipeg
K. Sing	-- Local Chairperson, Halifax
R. Dennis	-- Local Chairperson, Moncton
L-P Rousseau	-- Member, Local 335, Belleville
L. Robichaud	-- Witness

#### AWARD OF THE ARBITRATOR

The Arbitrator can find no merit in the position advanced by the Brotherhood. The material reveals that the grievor was assigned a regular part-time assignment as Counter Sales Agent, and was compensated at the rate of twenty-eight hours per week for the work performed in that capacity at the rate for that position.

Additionally, he was compensated under the Special Agreement provisions governing maintenance of earnings, receiving the difference between his earned wages and his maintenance of earnings guarantee. In the circumstances no violation of the Special Agreement is disclosed.

For these reasons the grievance must be dismissed.

February 15, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR