CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2361
Heard at Montreal, Thursday, 15 April 1993
concerning
VIA RAIL CANADA INC.
and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
DISPUTE:
Whether the Corporation must provide the Brotherhood with not less than three month's notice when a regular part-time assignment is abolished due to a technological, operational or organizational (T.T.O.) change.
JOINT STATEMENT OF ISSUE:
On April 2, 1992, the Corporation wrote to the Brotherhood advising that certain positions at Moncton would be affected by T.T.O. changes effective July 3, 1992, in accordance with Article 8 of the Supplemental Agreement.
Included in that letter was a paragraph advising that a regular part-time assignment held by Mr. J. Fitzpatrick would also be abolished on a ``10-day notice'', also effective July 3, 1992. The Corporation advised the Brotherhood that it did not believe an article 8 notice was required for the abolition of a regular part-time assignment.
The Brotherhood contends that the Corporation has violated article 8.1 of the Supplemental Agreement. The Brotherhood believes that an article 8 notice must be provided when a regular part-time assignment is abolished due to a T.T.O. change. The Brotherhood asks that the incumbent be compensated for any lost wages and benefits that would have been available to him under the Supplemental Agreement.
The Corporation declined the grievance.
The Corporation believes that the collective agreement is clear in that there is only one category of part-time employee, and part-time employees are entirely excluded from the provisions of the Supplemental Agreement.
FOR THE BROTHERHOOD:
FOR THE CORPORATION:
(SGD.) T. N. STOL
(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT
DEPARTMENT DIRECTOR, LABOUR RELATIONS
There appeared on behalf of the Corporation:
D. Fisher
Senior Advisor & Negotiator, Montreal
C. Pollock
Senior Labour Relations Officer, Montreal
And on behalf of the Brotherhood:
T. Barrons
Representative, Moncton
G. Murray
Regional Vice-President, Moncton
T. N. Stol
National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The issue in this dispute is whether the terms of the Supplemental Agreement apply to an employee who, like Mr. J. Fitzgerald, holds a regular part-time assignment.

The concept of the regular part-time assignment was adopted by the parties, for the purposes of their national agreement, in the Memorandum of Agreement dated November 19, 1989, and has continued to be applied since that time.

While the parties sought to argue broadly on the basis of the history of the administration of the collective agreement, from the standpoint of the Brotherhood, and from the basis of the interaction of the collective agreement and the Supplemental Agreement, from the standpoint of the Corporation, the Arbitrator is of the view that the matter can be determined on the language of the Supplemental Agreement. In my opinion the Supplemental Agreement is clear in defining the employees who are excluded from its coverage. Article 11 of the Supplemental Agreement provides as follows:

11.1

Casual and part-time employees are those who work casually on an as-required basis from day to day, including those who work part days as distinguished from employees who work on regular or regular seasonal positions.

Casual and part-time employees are entirely excluded from the provisions of this Agreement.

As is clear from the above provision, casual and part-time employees, as defined in article 11.1 of the Supplemental Agreement, are excluded from its provisions. I must agree with the representatives of the Brotherhood that the definition provided within that article makes it clear that the employees excluded are those whose assignments are on an occasional or "on call" basis, as distinguished from employees who hold a regular and permanent assignment.

With respect, the reliance of the Corporation on the provisions of article 4 of the collective agreement, and in particular article 4.25, is not helpful. The issue in this grievance is the status of regular part-time employees for the purposes of the Supplemental Agreement, and it is that document which must govern.

It is not disputed that employees holding a regular part-time assignment do so on a permanent basis. Regular part-time positions are bulletined pursuant to article 12 of the collective agreement, which deals with the bulletining and filling of positions. When the parties established the concept of permanent part-time assignments, originally under the terms of the Memorandum of Agreement of November 19, 1989, they must be taken to have been aware of the provisions of article 11 of the Supplemental Agreement. Plainly, at that time, and it would appear, since then, they have treated employees who hold permanent part-time assignments in a substantially different fashion from those who hold unassigned positions and fall within the definition of casual and part-time employees working on an as-required basis from day to day, within the contemplation of article 11.1 of the Supplemental Agreement. Had it been their intention, the parties could have provided language in the Memorandum of Agreement, or elsewhere, to extend the exclusion contained in article 11.1 to the new classification of regular part-time assignments which they established. They did not do so, and absent any language to that effect, the Arbitrator cannot conclude that they so intended and cannot sustain the position of the Corporation that the Supplemental Agreement does not apply to employees who hold a regular part-time assignment.

For the foregoing reasons the grievance is allowed. In light of the submissions made at the hearing, the Arbitrator limits the remedy, for the time being, to a declaration that Mr. J. Fitzgerald, who held a regular part-time assignment abolished effective July 3, 1992 was entitled to all of the protections of the Supplemental Agreement in respect of the operational or organizational change which gave rise to the abolishment of his assignment. I retain jurisdiction in the event of the inability of the parties to resolve any further issues in relation to the remedy appropriate to Mr. Fitzgerald.

April 16, 1993

MICHEL G. PICHER

ARBITRATOR