CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2390

Heard at Montreal, Wednesday, 15 September 1993
concerning

VIA RAIL CANADA INC.
and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

Mr. R. St-Laurent and other employees on regular part-time assignments improperly compensated when required to work on a General Holiday.

BROTHERHOOD'S STATEMENT OF ISSUE:

Mr. St-Laurent, whose seniority date is July 6, 1990, was assigned to a regular part-time assignment of Counter Sales Agent I in April 1992.

On Good Friday he worked 6.5 hours as a Counter Sales Agent I.

Mr. St-Laurent was paid 6.5 hours at time and one half for the time he actually worked on the General Holiday and another 6.5 hours at straight time rates for the General Holiday.

The Brotherhood believes that Mr. St-Laurent, and others like him, was improperly compensated. The Brotherhood contends that Mr. St-Laurent and other employees in the same or similar circumstances should have been paid eight hours at straight time for the General Holiday as well as the hours required to work on such holiday. The Brotherhood claims that to do otherwise, the Corporation is in violation of article 8.1, 8.2, 8.3, 8.4, 8.5, 8.6 and 8.7 of Collective Agreement No. 1.

The Corporation believes that Mr. St-Laurent was properly compensated for the General Holiday and denies any violation of Article 8. The Corporation believes Mr. St-Laurent falls within the category of part-time employee as defined in article 4.25 and that therefore he was paid correctly as required by articles 8.5(c) and 8.7.

FOR THE BROTHERHOOD:
(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

There appeared on behalf of the Corporation:

C. Rouleau	- Senior Labour Relations Officer, Montreal
C. Pollock	- Senior Labour Relations Officer, Montreal
J. R. Kish	- Senior Advisor, Labour Relations, Montreal
R. DeWolfe	- Manager, On-Train Services, Toronto

And on behalf of the Brotherhood:

T. E. Barron	- Representative, Moncton
R. A. Dennis	- Local Chairperson, Moncton

AWARD OF THE ARBITRATOR

The issue in the case at hand is whether the grievor was entitled to holiday pay in accordance with articles 8.5(c) and 8.7 of the collective agreement, which govern part-time employees or whether he was entitled to holiday pay under the terms of article 8.5(a), which governs assigned employees. The provisions in question read as follows:

8.5 (a) An assigned employee qualified under article 8.2

or 8.3 and who is not required to work on a general holiday shall be paid eight hours' pay at the straight time rate of his regular assignment.

8.5 (c) A part-time employee having seniority on or after January 1, 1987, qualified under article 8.2 or 8.3 and who is not required to work on a general holiday shall be paid based on the average hours worked per day over the previous 30 calendar days at straight time rates, not to exceed a maximum of eight hours' pay. Straight time rate of pay will be the rate of pay of last position worked prior to the general holiday.

8.7 An employee who is required to work on a general holiday shall be paid, in addition to the pay provided in article 8.5 of this article, at a rate equal to one and one-half time his regular rate of wages for the actual hours worked by him on that holiday and with a minimum of 3 hours for which 3 hours' service may be required, but an employee called for a specific purposes shall not be required to perform routine work to make up a such minimum time.

It is common ground that Mr. St-Laurent, and employees similarly situated, was paid for the hours which he worked on the Good Friday holiday, in accordance with the provisions of the article 8.7. The issue therefore becomes whether his additional holiday pay is to be determined under article 8.5 (a) or (c). In the Arbitrator's view article 4.25 of the collective agreement is central to the resolution of this grievance. it provides as follows:

4.25 Part-time employees are those that have less than eight (8) hours per day or less than 40 hours per week. The Corporation and Brotherhood agree that there shall be one category of part-time employee which is outlined in this agreement.

Article 4 of the collective agreement concerns hours of work, and its various provisions obviously make a distinction between "regularly assigned employees" and "part-time employees". Clearly, part of the difference reflects the concept of relief and spare employees which existed under previous collective agreements. However, the current agreement plainly contemplates regular part-time assignments, as reflected in article 4.28 which is as follows:

4.28 Regular part-time assignments may be established as mutually arranged, in accordance with the provisions of articles 4.12 through 4.27, where applicable.

In light of the above provisions it is, in the Arbitrator's view, difficult to characterize Mr. St-Laurent simplistically as a "regularly assigned employee" or an "assigned employee" within the meaning of article 8.5(a) of the collective agreement. If it were so it would be arguable that he would be entitled to 8 hours at his regular rate any time he reported for duty on his regular assignment, in accordance with article 4.5 of the collective agreement. Plainly, however, a reading of all of the provisions of the collective agreement as a rational whole would not support that result. As reflected in article 4.28, the parties acknowledge the existence of regular part-time assignments within the collective agreement. When that provision is read together with article 4.25, which emphasizes that there is to be only one category of part-time employee for the purposes of the collective agreement, I cannot see upon what basis the grievor could be qualified as other than a part-time employee within the meaning of article

8.5(c), having regard to the regular part-time assignment which he was filling, and to the fact that his seniority date is after January 1, 1987. If article 4.25 is to have any meaning, absent any contrary indication in the language of the collective agreement, a part-time employee must be so considered for all purposes. As article 4.28 reflects, that is so even if the individual in question holds a regular part-time assignment.

For the foregoing reasons the grievance must be dismissed.

September 17, 1993 (sgd.) MICHEL G. PICHER
ARBITRATOR