

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2434

Heard in Montreal, Thursday, 16 December 1993  
concerning  
VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:

Ms. Lee Ann Dowhanik's entitlement to displace onto the position of Clerk, Pension and Administration and Clerk, Employee Services.

JOINT STATEMENT OF ISSUE:

The grievor was advised by the Corporation on December 8, 1992, that she would not be allowed to displace onto the above positions, due to a potential conflict of interest, resulting from her responsibilities as Secretary-Treasurer of the Brotherhood's local in Montreal.

The Brotherhood contends that the Corporation's stance is unreasonable, inconsistent with past practice and discriminatory. The Brotherhood further maintains that the Corporation is in violation of all provisions of Collective Agreement No. 1, and is also in conflict with the Charter of Rights by not allowing the grievor to displace onto said positions.

As settlement of this dispute, the Brotherhood requests that the "conflict of interest" restriction be lifted, that the grievor be allowed to assume the positions in question and that she be reimbursed for any lost wages and benefits.

The Corporation declined the grievance.

The Corporation does not believe that Ms. Dowhanik should be placed in a situation where her obligations to protect confidential information, with which the positions deal on an ongoing basis, conflict with her obligations to protect the Brotherhood's interests in her capacity as Local Secretary-Treasurer.

The Corporation further denies any past practice and maintains that there has been no violation of the collective agreement. Finally, should the Brotherhood wish to pursue its allegation of potential conflict under the Charter of Rights, the Corporation believes that this issue should be addressed through the appropriate forum.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL  
NATIONAL VICE-PRESIDENT  
RELATIONS

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE  
DEPARTMENT DIRECTOR, LABOUR

There appeared on behalf of the Corporation:

C. Rouleau	- Senior Officer, Labour Relations, Montreal
C. Pollock	- Senior Officer, Labour Relations, Montreal
D. Fisher	- Senior Negotiator & Advisor, Labour Relations, Montreal
A. Houde	- Advisor, Performance Management Programs, Montreal

D. Depelteau - Officer, Procedures & Human Resources  
Services, Montreal

And on behalf of the Brotherhood:

A. Wepruk - Regional Vice-President, Montreal  
J. Brown - Representative, Montreal  
F. Bisson - Local Chairperson, Montreal  
L. A. Dowhanik - Grievor

#### PRELIMINARY AWARD OF THE ARBITRATOR

For the reasons stated by the Arbitrator at the hearing, this is not a case where this Office should adjourn this grievance pending resolution of the complaint filed before the Canada Labour Relations Board. The rights of the grievor under the terms of the collective agreement are different in substance from those to be considered by the Canada Labour Relations Board, whose jurisdiction relates to the allegations of unfair labour practice made by the Brotherhood. There is, moreover, no basis to adjourn the matter for a lack of particularity in the Joint Statement of Issue, as argued by the Corporation, since the Corporation has effectively waived that position by itself signing the Joint Statement of Issue.

The matter shall therefore be continued for hearing on its merits.

17 December 1993\_\_\_\_\_

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MICHEL G. PICHER  
ARBITRATOR