

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1348

Heard at Montreal, Tuesday, May 14, 1985

Concerning

VIA RAIL CANADA INC.

and

**CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT
AND GENERAL WORKERS**

DISPUTE:

Request by the Brotherhood to upgrade the position of Counter Sales Agent 1 to Senior Counter Sales Agent at Saint John, New Brunswick under Article 21.7 of Collective Agreement No. 1.

JOINT STATEMENT OF ISSUE:

The positions of Senior Counter Sales Agent, with rest days Saturday and Sunday, and Counter Sales Agent 1 with rest days Monday and Tuesday are staffed at Saint John, New Brunswick.

The Brotherhood contends that on Saturday and Sunday, the Counter Sales Agent 1 performs the duties of Senior Counter Sales Agent, and requests that the position be upgraded on Saturdays and Sundays.

The Corporation maintains that the Counter Sales Agent 1 working at Saint John, performs the basic duties of a Counter Sales Agent 1, and does not have the responsibilities of a Senior Counter Sales Agent, nor has there been any significant increase in the duties of the Counter Sales Agent position since it was established, to justify any change in classification.

The Corporation has rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. GAGNE
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. O. White – Labour Relations Assistant, Montreal
D. J. Matthews – Manager, Human Resources, VIA Atlantic, Moncton
J. A. Dugas – District Supervisor, Station Sales & Services, VIA Atlantic, Moncton

And on behalf of the Brotherhood:

G. T. Murray – Representative, Moncton

AWARD OF THE ARBITRATOR

The central issue raised by the trade union is whether the grievor, Mr. T. G. Gorman, performs the core functions of the Senior Counter Sales Agent at Saint John, N.B., during his shifts on the Saturday and Sunday rest days. If the trade union can satisfy this burden then it may very well be justified in requesting a change in the grievor's job classification pursuant to Article 21.7 of Collective Agreement No. 1 enabling Mr. Gorman to receive the appropriate rate of pay for that position. There is no dispute that on the grievor's regular work days he discharges the duties of a Counter Sales Agent 1.

The evidence demonstrated that the grievor does not perform the core duties of the Senior Counter Sales Agent on the weekends. The only identifiable function that indicated that Mr. Gorman discharged a responsibility that was a part of the Senior Counter Sales Agent's position was his opening and closing the station facility. The trade union failed to establish by persuasive evidence that Mr. Gorman performed supervisory duties and responsibilities in directing the work force (i.e., the other Counter Sales Agents) or otherwise was monitoring the operations of the Saint John Station.

What the trade union appeared to have relied upon in support of its contention is the grievor's responsibility of doing the bank deposits during his weekend shifts. The uncontradicted evidence established, however, that that function is part of his regular duties as a Counter Sales Agent. The employer adduced in evidence the job description of the Counter Sales Agent 1 position to confirm this fact. Merely because the grievor does not normally perform that job during his regular work week does not necessarily elevate his position to the Senior Counter Sales Agent position because he may be required to make the bank deposits on weekends.

In this regard I am quite satisfied that the employer was clearly in error in elevating the Counter Sales Agent's position to the Senior Sales Agent's rate of pay at Oakville and Brampton, Ontario, because of their making the bank deposits on weekends. It was this error that obviously prompted Mr. Gorman to file his grievance for the purpose of achieving the same benefits as his Ontario colleagues.

It seems to me however that the more prudent manner for the employer to correct that error is to make an appropriate adjustment to the wages paid each of its Counter Sales Agent wherever their work location who perform extra duties on weekend shifts.

For all the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR