

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2096

Heard at Montreal, Wednesday, 9 January 1991

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

A claim for eight hours' wages on behalf of Mr. M. Gallant.

JOINT STATEMENT OF ISSUE:

On May 31, 1989, Mr. M. Gallant attempted to displace a junior employee, W. Clements, from a temporary Classified Labourer vacancy at the Halifax Maintenance Centre. At that time, Mr. Gallant was protecting a part-time position at Halifax Station.

The Brotherhood contends that the Corporation violated Article 12.7 of Collective Agreement No. 1 and the local part-time agreement, when the grievor, who was between assignments, was not permitted to displace a junior employee at the Maintenance Centre.

In rejecting the claim, the Corporation maintains that Mr. Gallant was not entitled to displace as he was protecting part-time work at Halifax Station and was not subject to layoff, but was receiving a 20-hour guarantee. The Corporation denies any violation of the Collective Agreement or of the local part-time agreement.

FOR THE BROTHERHOOD:

(SGD.) T. McGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

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

There appeared on behalf of the Corporation:

C. Pollock	– Senior Officer, Labour Relations, Montreal
M. St-Jules	– Senior Negotiator & Advisor, Labour Relations, Montreal
D. Fisher	– Senior Officer, Labour Relations, Montreal
R. Wesley	– Senior Negotiator & Advisor (Trainee), Labour Relations, Montreal
J. R. Kish	– Personnel & Labour Relations Officer, Customer Services, Montreal

And on behalf of the Brotherhood:

G. Murray	– Regional Vice-President, Moncton
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AWARD OF THE ARBITRATOR

It is common ground that the resolution of this dispute turns on the application of Article 12.7 to the circumstances of Mr. Gallant. That article is as follows:

12.7 Temporary vacancies of ten working days or less, and vacancies in other positions pending occupancy by the successful applicant may be filled without the necessity of advice notice or bulletin:

- (a) first by a qualified part-time employee who has not completed forty (40) hours of work for any particular week,
- (b) then by a senior qualified regularly assigned employee at the station or terminal who desires such work.

It does not appear disputed that Mr. Gallant was in the position of a part-time employee, in what was previously known as the position of a spare and relief employee, protecting part-time work in the Customer Services Centre. At a time when he was on the spare board, but without an immediate work assignment, he sought to displace a junior part-time employee who then was filling a temporary vacancy at the Maintenance Centre, under Article 12.7 of the Collective Agreement. The Brotherhood asserts that as a spare board employee with no immediate work assignment, the grievor was in effect an employee unable to hold work at the Halifax Station or Terminal, and was therefore entitled to displace the junior employee in the Maintenance Centre, which it maintains was within the same station or terminal.

The first position advanced by the Corporation is that the Customer Services Centre, which is apparently located in the passenger station at Halifax, and the Maintenance Centre, which is in a separate building nearby, are separate terminals or stations for the purposes of the application of Article 12.7. This the Brotherhood disputes.

After a careful review of the material the Arbitrator cannot conclude that the parties did intend that the two separate work locations in Halifax be treated as separate stations or terminals for the purposes of the application of Article 12.7 of the Collective Agreement. The Corporation's position turns on an interpretation of the terms of a local agreement governing part-time employees at Halifax, Moncton and Line Points, as outlined in a letter dated December 29, 1988 signed by representatives of both parties. That agreement establishes three specific groups of part-time employees in Moncton, being the Telephone Sales Office and Ticket Office, the Baggage Room, Employee Service Centre and Equipment Coach Yard, and, finally, the Regional Headquarters. In Halifax two groups are established, namely the Customer Services employees and the Maintenance Centre employees.

As the Brotherhood's representative points out, one reason for the establishing of the groups was to ensure the availability of a core of part-time employees at each location, and in particular at the Halifax Maintenance Centre where work assignments are generally lower paid and less desirable. The intention of the agreement must be gleaned in light of its overall terms, and of the history of the agreements between the parties with respect to the treatment of employees at Moncton and Halifax. It is significant to note that over the years there have been a number of letters of agreement exchanged between the parties clarifying the work entitlement of part-time employees, and in particular the application of Article 12.7 to them. Such letters were exchanged on October 6, 1987 and April 22, 1985. The latter letter, sent by Mr. D.J. Matthews, Manager of Human Resources, to Brotherhood Regional Vice-President W.C. Vance, and accepted by Mr. Vance's signature, contains the following observation with respect to the application of Article 12.7 in Moncton:

The matter of 12.7 vacancies was also discussed and agreement reached that for the purposes of 12.7 vacancies, **Moncton will be defined as three separate terminals**; (1) Moncton Terminal Building, (2) Station & Baggage and C.D.C., and (3) the Telephone Sales Office. **Moncton has for some time now been considered as three terminals for 12.7 vacancies.** The following is the manner of operation when the Corporation desires to fill a 12.7 vacancy.

The Supervisor will canvass the regularly assigned employees at the terminal where the vacancy occurs. the senior qualified employee desiring the position will be assigned. If there is no interested employee at the terminal where the vacancy occurs, the Supervisor will contact the senior qualified employee on the Extra and Unassigned list, who will be assigned for the duration of the vacancy. At the conclusion of the vacancy, the employee assigned will revert to the Extra

and Unassigned list for other work offering. If no work offering, the employee will be permitted to displace a junior Extra and Unassigned employee on a 12.7 vacancy before being laid off, notwithstanding Article 12.7 of Agreement No. 1.

(emphasis added)

The issue then becomes whether the subsequent Local Maritime agreement executed on December 29, 1988 continued the treatment of the three Moncton locations as separate terminals for the purposes of Article 12.7 of the Collective Agreement, and extended the same concept to the Halifax locations. That appears to have been the Corporation's understanding.

The agreement of December 29, 1988 reads, in part, as follows:

The following is an agreement for your consideration, arrived at as a result of these meetings. This agreement covers part-time employees at Halifax, Moncton and Line Points.

1. For the purposes of Part-time, Moncton will have three specific groups:
 - (a) Telephone Sales Office and Ticket Office;
 - (b) Baggage Room, Employee Service Centre and Equipment Coach Yard;
 - (c) Regional Headquarters;

Halifax will be made up of two specific groups:

- (A) Customer Services employees
- (B) Maintenance Centre employees

The make up of these groups will be based on a combination of seniority and qualifications and will be subject to a local agreement between the local chairperson and the respective supervisor.

2. Although there will be specific groups of Part-Time employees at Moncton and Halifax, these specific groups will be included in a General group in each respective terminal for movement within the specific groups.

...

7. Qualified Part-Time employees at Moncton and Halifax shall be directed from one specific group to another if the number of Part-Time employees in the specific group requiring the work to be performed is depleted of Part-Time employees or such employees have worked forty hours in the work week. Qualified employees called from the "general group" will be called in order of seniority. If they cannot be contacted or fail to respond, their guarantee will be reduced in accordance with Article 4.16.

It appears to the Arbitrator that foregoing agreement must be interpreted in the context of the history of bargaining between the parties in the Region. At the time of the agreement, for more than three years, it had been well established that the three separate locations in Moncton were treated as three terminals for the purposes of Article 12.7 vacancies. Nothing in the language of the agreement of December 29, 1988 expressly or impliedly revokes that understanding. By the same token however, there is no comparable agreement of which the Arbitrator is aware as regards the splitting of Halifax into two separate terminals for the purposes of Article 12.7. In my view the circumscribing of the seniority rights of employees should not lightly be inferred, and should be based on clear and unequivocal language, as is evidenced in Moncton.

On the basis of the foregoing analysis, the Arbitrator would conclude that Mr. Gallant was entitled to exercise his seniority to displace the employee in the Maintenance Centre under the terms of Article 12.7 of the Collective Agreement, as that location did not constitute a separate terminal. The Arbitrator must also reject the alternative submission of the Corporation to the effect that the grievor was in fact able to hold work to the extent that he was not removed from the spare board at Halifax, and continued to be entitled to the payment of his guarantee. That view of the concept of a part-time employee being laid off or unable to hold work is not supported in light of the statements of Mr. Matthews in his letters of October 6, 1987 and April 22, 1985 confirming that a part-time employee completing an Article 12.7 vacancy assignment may, "if there is no work offering", exercise his seniority to displace another junior part-time employee on an Article 12.7 vacancy.

For the foregoing reasons the grievance must be allowed.

January 11, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR