

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2109

Heard at Montreal, Wednesday, 13 February 1991

concerning

**VIA RAIL CANADA INC.**

and

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

### **DISPUTE:**

Whether the Corporation can use employees on Maintenance of Earnings to work up to 40 hours in a week even when they are assigned to regular part-time positions.

### **JOINT STATEMENT OF ISSUE:**

Messrs. V. Mann and J. Tremblay became entitled to Maintenance of Earnings protection following the Article J Notice that took effect on January 15, 1990.

Following the Special General Bid, both employees were assigned to regular part-time assignments of less than 40 hours per week.

The Corporation compelled these employees to work in addition to their regular part-time assignments but not in excess of 40 hours in any week.

The Brotherhood contends that the Corporation can not unilaterally force these employees to work in excess of their regular assignments, in violation of the Collective Agreement.

The Corporation denies any violation of Collective Agreement No. 1. The Corporation believes that it is entitled to work employees who are on Maintenance of Earnings off their regular assignments because the Corporation is maintaining their salaries at a forty hour per week rate and therefore the Corporation can compel these employees to work up to forty hours per week if the need arises.

**FOR THE BROTHERHOOD:**

**FOR THE CORPORATION:**

**(SGD.) A. CERILLI**

for: NATIONAL VICE-PRESIDENT

**(SGD.) M. ST-JULES**

for: DEPARTMENT 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 Officer, Labour Relations, Montreal
J. Kish	– Senior Advisor, Labour Relations, Montreal
D. Wolk	– Manager Customer Services, Montreal
M. M. Boyle	– Observer
D. David	– Observer

And on behalf of the Brotherhood:

A. Cerilli	– Regional Vice-President, Winnipeg
T. McGrath	– National Vice-President, Ottawa
G. Murray	– Regional Vice-President, Moncton
R. J. Stevens	– Regional Vice-President, Toronto
R. Moreau	– Regional Vice-President, Montreal
J. Brown	– Representative, Montreal
A. Della Penna	– Local Chairperson, Montreal
F. Bisson	– Local Chairperson, Montreal
J-J Journault	– Local President, Montreal
K. Williams	– Secretary, Local Grievance Committee, Winnipeg
K. Sing	– Local Chairperson, Halifax
R. Dennis	– Local Chairperson, Moncton
L-P Rousseau	– Member, Local 335, Belleville
L. Robichaud	– Witness

### **AWARD OF THE ARBITRATOR**

The thrust of this grievance is that the grievors Mann and Tremblay, who were assigned to regular part-time assignments of less than forty hours per week, while enjoying maintenance of earnings protection whereby they retain their salaries at forty hours per week, object to being assigned to work beyond hours of their regular part-time assignment, where the total number of the hours worked does not exceed forty hours in any week. In other words, they object to being required to work in excess of their part-time hours, even though they are paid on a full-time basis.

Among the most fundamental principles underlying Collective Agreement No. 1, as with any collective agreement, is that employees can expect a day's pay for a day's work, and conversely their employer is entitled to expect a day's work for a day's pay. The purpose of the maintenance of earnings provisions established in the Supplemental Agreement is to ensure that certain employees do not lose earnings by reason of changes occasioned by operational and organizational change. There is, however, nothing in that agreement, nor in the terms of the Special Agreement and Memorandum of Agreement executed between the parties on November 19, 1989 which derogates from the general principle of work for pay which is implicit in Collective Agreement No. 1. Nor does it appear to the Arbitrator that there is anything within the provisions of Collective Agreement No. 1, or any of the above mentioned agreements, which would circumscribe the prerogative of the Corporation to assign additional work to employees who hold regular part-time assignments of less than forty hours per week in circumstances where they are being fully paid for all time so worked.

For the foregoing reasons the grievance must be dismissed.

February 15, 1991

**(Sgd.) MICHEL G. PICHER**  
ARBITRATOR