

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2237

Heard at Montreal, Tuesday, 11 March 1992

concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

This is a grievance to determine if the work assigned to Inventory Analysts at the Montreal Maintenance Centre is work that should properly be assigned to members of the bargaining unit under Collective Agreement No. 1. [translation]

JOINT STATEMENT OF ISSUE:

The Corporation abolished three Stores Clerks positions and redistributed the work in question as a means of increasing the efficiency of its operations. The Brotherhood received a three month notice pursuant to Article 8 of the Supplemental Agreement and the incumbents of the abolished positions, that is Messrs. Smollet, Hébert and Lamarre, were given the full protections and benefits of that agreement.

The Brotherhood contends that the Corporation violated articles 2, 3, 5, 10, 11 and 12. The Brotherhood alleges that the Stores Clerks were replaced by four non-scheduled Analysts. The Brotherhood also alleges that the Corporation wrongly distributed the work of the Stores Clerks to other members of the bargaining unit. The Brotherhood seeks the reestablishment of the three Stores Clerks positions and compensation of the grievors for the overtime hours worked by the Analysts and the General Supervisor.

The Corporation denies any violation of the collective agreement and maintains that it was fully within its rights to redistribute the work to other members of the bargaining unit. The Corporation believes that, except for a similarity in some minor duties, the Analysts have not replaced the stores clerks. The Corporation is of the view that, in view of the nature of the work performed by the Analysts, the work does not, nor did not, bring them into the bargaining unit.

The Corporation asserts as well that the Brotherhood has not identified any specific tasks which should have been assigned to the grievors and that, therefore, they have not demonstrated the legitimacy of their demand for compensation for overtime.

The Corporation rejected the grievance at all steps of the grievance procedure. (translation)

FOR THE BROTHERHOOD:

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

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
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. S. Fisher	– Senior Officer, Labour Relations, Montreal
A. Biron	– Manager, Material M.M.C., Montreal
J. R. Kish	– Senior Advisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

- A. Wepruk – Representative, Montreal
- S. Bison – Local Chairperson, Montreal
- R. Smollett – Grievor
- P. Lamarre – Grievor
- M. Hébert – Grievor

AWARD OF THE ARBITRATOR

In the Arbitrator's view the Brotherhood's claim is not made out on the evidence adduced. It establishes that in 1988 the work at the Montreal Maintenance Centre Stores was very much in transition, both by virtue of the implementation of a new computer system and the reorganization of the Corporation's Stores operations at that location. As has been previously noted in decisions of this Office, the Brotherhood cannot assert jurisdictional possession of bargaining unit work, save where it can be established that the work of non-bargaining unit personnel falls entirely within the bargaining unit in the sense that the persons so engaged must be treated as being under the collective agreement. (*See CROA 117, 118, 246, 322, 381, 693, 1160, 2006.*)

The material before the Arbitrator establishes that the persons who were previously employed as Stores Supervisors were reclassified as Analysts. They continued to perform many of the functions which they had previously, and were also assigned certain clerical and purchasing functions which had previously been performed by members of the bargaining unit over a period of several months. The evidence further discloses that certain of the functions of the grievors were dispersed to other members of the bargaining unit.

On the whole the evidence does not disclose the wholesale transfer of the grievors' jobs into the hands of non-scheduled employees in the sense contemplated in the above-noted jurisprudence. Apart from the limited history of the work assignment in question, the evidence does not disclose that the analysts have been given assignments which effectively involve little else but the work of a bargaining unit employee. The evidence establishes that supervisors did exercise a purchasing function, albeit at a higher level of monetary discretion. The addition of certain peripheral clerical functions, and the dispersal of work to other members of the bargaining unit does not, in the circumstances, constitute a violation of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

March 13, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR