# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2240

Heard at Montreal, Wednesday, 11 March 1992

concerning

## VIA RAIL CANADA INC.

and

## CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

### DISPUTE:

A time claim for 16 hours at straight time on behalf of Mr. F. Savoia.

### JOINT STATEMENT OF ISSUE:

December 26, 1990, and January 2, 1991, fell on Wednesdays. Mr. Savoia was assigned a regular part-time assignment working on Sundays, Mondays and Tuesdays. He was compensated as if he worked 5 days per week at 40 hours due to Maintenance of Earnings protection under the Special Agreement.

Mr. Savoia did not work on December 26, 1990 or on January 2, 1991. Both these days were general holidays under Collective Agreement No. 1. He also did not work Thursday, December 27, Friday, December 28, Saturday, December 29, nor did he work Thursday, January 3, Friday, January 4, or Saturday, January 5.

The Brotherhood contends that the Corporation has violated Articles 8.3 and 8.5 of Collective Agreement No. 1. The Brotherhood argues that ``as Mr. Savoia was not given ten days (advance) notice to work on these holidays, he must have been deemed to have work on these days." (sic)

The Corporation denies any violation of the Collective Agreement. The Corporation believes that the two general holidays either fell on Mr. Savoia's rest days or they fell on an unassigned work day. If they fell on unassigned work days, he was paid for those days and he did not have to work on either of those. The Corporation believes that to pay Mr. Savoia any additional money for time not worked would amount to a pyramiding of benefits and place Mr. Savoia in a position better than other employees not required to work on the general holiday.

| FOR THE BROTHERHOOD: | FOR THE CORPORATION: |
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| (SGD.) T. N. STOL | (SGD.) C. C. MUGGERIDGE |
| NATIONAL VICE-PRESIDENT | DEPARTMENT DIRECTOR, LABOUR RELATIONS |

There appeared on behalf of the Corporation:

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| D. S. Fisher | – Senior Officer, Labour Relations, Montreal |
| M. St-Jules | – Senior Negotiator & Advisor, Labour Relations, Montreal |
| J. R. Kish | – Senior Advisor, Labour Relations, Montreal |
| C. Pollock | – Senior Officer, Labour Relations Montreal |

And on behalf of the Brotherhood:

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| P. Askin | – Representative, Vancouver |

## AWARD OF THE ARBITRATOR

Although the instant grievance claims a violation of articles 8.3 and 8.5 of the collective agreement, the Brotherhood's representative concedes that it must, in the end, depend upon the application of article 8.7 of the collective agreement which governs the entitlement to payment for work on a general holiday. That article provides as follows:

> **8.7** An employee who is required to work on a general holiday shall be paid, in addition to the pay provided in Article 8.5 of this Article, at a rate equal to one and one-half time his regular rate of wages for the actual hours worked by him on that holiday with a minimum of 3 hours for which 3 hours' service may be required, but an employee called for a specific purpose shall not be required to perform routine work to make up such a minimum time.

It appears agreed before the Arbitrator that the two general holidays fell on Mr. Savoia's unassigned work days. Those are days for which he was paid and did not work, by reason of his entitlement to wages as an employee with the protection of employment security.

On the facts as disclosed, and having regard to the purpose of article 8.7 of the collective agreement, the Arbitrator cannot sustain the grievance. On the two days in question Mr. Savoia received full wages for a regular day's pay by reason of his protections under the employment security and income maintenance provisions of the Supplemental Agreement. The purpose of those provisions, in part, is to ensure that an employee suffers no loss of wages, even though work might not be available by reason of a technological, operational or organizational change. That was the circumstance in which the grievor found himself on the two days in question, and the basis upon which he was paid.

Article 8.7 of the collective agreement, however, deals with an entirely different circumstance and has a different purpose. It is intended to provide premium pay for employees who suffer the inconvenience of being required to work on a general holiday, including a holiday which is moved to the normal working day of the employee when the holiday falls an employee's rest day, as provided under article 8.1 of the collective agreement. The premium, in other words, is for the loss of the enjoyment of the holiday by reason of being required to be at work.

It is common ground that Mr. Savoia was not required to work on either of the holidays which are the subject of this grievance. He was, in the circumstances, fully protected by his employment security status, and lost no entitlement to his regular wages. He suffered no inconvenience to the extent that he was not required to work on the two holidays. I do not see how he can, in these circumstances, claim the further protections of the additional premium pay provided for in article 8.7 of the collective agreement. He did not satisfy the threshold requirement of that article, as he did not work on the general holidays. To support the Brotherhood's contention in this case would result in the duplication of payments, and a pyramiding of benefits, not intended by the terms of the collective agreement or the supplemental agreement.

For the foregoing reasons the grievance must be dismissed.

March 13, 1992

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