CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3766

Heard in Montreal Thursday, 14 May 2009

Concerning

VIA RAIL CANADA INC.

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The application of overtime rates to part-time employees.

JOINT STATEMENT OF ISSUE:

The collective agreement provides that part-time employees are governed by the work rules provision of article 4.29 of collective agreement no. 1. There is one category of part-time employees. It is the Union's position that the positions in the Moncton Telephone Sales office are bulletined and bid with regular assigned rest days. The Union alleges that the Corporation is in violation of the provisions of articles 5.1 and 5.8.

The Union requests that any part-time employee not paid punitive rates on their rest days be made whole whenever they were so utilized.

The Corporation submits that part-time employees are correctly paid overtime in accordance with the collective agreement, specifically article 4.18 which states that overtime rates will apply after 8 hours in a day or 40 hours in a work week.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) H. GRANT	**(SGD.) B. A. BLAIR**
SECRETARY/TREASURER	**SR. ADVISOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

B. A. Blair	– Sr. Sr. Advisor, Labour Relations, Montreal
C. Morrison	– Manager, T.S.O., Moncton
M. Boulanger	– Direcotr, Telephone Sales Office, Montreal
D. Stroka	– Sr. Sr. Advisor, Labour Relations, Montreal

And on behalf of the Union:

H. Grant	– Secretary/Treasurer, Toronto
D. Olshewski	– National Representative, Winnipeg
S. Auger	– Bargaining Representative, Montreal

AWARD OF THE ARBITRATOR

The Union maintains that part-time employees who are called to work on what would otherwise be their scheduled day off are entitled to overtime payment for such work. In that regard it relies on the language of article 5.8 which reads as follows:

> **5.8** Employees required to work on their assigned rest days shall be paid at one and one-half times their hourly rate with a minimum of three hours for which three hours of service may be required, except:
>
> **(a)** as otherwise provided under article 6;
>
> **(b)** where such work is performed by an employee moving from one assignment to another or to or from part-time status in the application of seniority or as locally arranged.

The Corporation, however, relies on the language of article 4.18 of the collective agreement which reads as follows:

> **4.18** Part-time **e**mployees may work overtime as locally arranged in writing with due regard to Article 5.1. Overtime rates of pay will apply after eight hours in a day or 40 hours in a work week.

Upon a review of the evolution of these provisions in the collective agreement, the Arbitrator is satisfied that the position of the Corporation must be preferred, notwithstanding that article 4.29(a) of the collective agreement lists a substantial number of articles which are said to apply to part-time employees and that article 5.8 is included among those articles

It is trite to say that a board of arbitration must interpret the provisions of a collective agreement in a manner that is complementary, and not contradictory. It does not appear disputed that the language of article 4.18 has formed part of the collective agreement for many years. Additionally, the unrebutted evidence of the Corporation is that the overwhelming practice across its system has been for part-time employees to be paid overtime rates only where they work more than eight hours in a day or forty hours in a work week. With the exception of two or three small locations in Atlantic Canada, the preponderant practice of the Corporation has been not to pay overtime rates to part-time employees who may be called to work on what would otherwise be a day for which they are not scheduled to work.

In considering the merits of the parties' respective positions, the Arbitrator finds it difficult to rationalize the Union's interpretation with any purposive or fair application of the collective agreement. If its interpretation is correct a part-time employee could obviously work less than forty hours in a given week and less than eight hours in any given day and nevertheless be entitled to overtime in circumstances where such overtime would not be paid to a full time employee working substantially more hours in the same week. In the Arbitrator's view it would require clear and unqualified language to establish that the parties intended such a result. No such language is to be found here. Additionally, the practice which has been followed by the Corporation, apparently without grievance until the instant case, persuasively supports its interpretation.

For all of the foregoing reasons the grievance must be dismissed.

May 19, 2009

(signed) MICHEL G. PICHER
ARBITRATOR