

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4128**

Heard in Montreal, Thursday 12 July 2012

Concerning

**VIA RAIL CANADA INC.**

And

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

**DISPUTE:**

Can a part time employee be awarded a temporary vacancy to cover a full time position under article 12.6 of collective agreement #1?

**JOINT STATEMENT OF ISSUE:**

On February 8, 2011, a position was bulletined in London Station under article 12.6 of collective agreement #1 (Temporary Vacancies, newly created positions and seasonal positions, when known to be for 90 calendar days' duration or less). Ms. C. Stracuzza a part time employee, bid for the position. It was awarded to a junior employee, Ms. C. Lamont-Martin, who is a full time employee.

The Union contends article 12.6 awards the position to the qualified senior employee in the Region who makes application. Since Ms. Stracuzza was the most senior applicant, she should be awarded the position. The Union seeks full redress for Ms. Stracuzza and that she be awarded the position.

The Corporation submits that part-time employees are governed by specific articles of the collective agreement, including article 4.29, and that article 12.6 is expressly excluded from these applicable articles.

**FOR THE UNION:**  
**(SGD.) R. FITZGERALD**  
**NATIONAL REPRESENTATIVE**

**FOR THE COMPANY:**  
**(SGD.) B. A. BLAIR**  
**SR. ADVISOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

B. A. Blair	– Sr. Advisor, Labour Relations, Montreal
J. Mailhot	– Advisor, Labour Relations, Montreal
K. Murphy	– Manager, CE SWO, Toronto
A. Leduc	– Supervisor, Servicing, Montreal

G. Côté – Manager, Servicing, MMC, Montreal

There appeared on behalf of the Union:

R. Fitzgerald – Staff Representative, Toronto  
 D. Andru – Regional Representative, Toronto  
 J. Fournier – National Representative, Montreal  
 S. Auger – Regional Representative, Montreal  
 F. Sauvé – Grievance Chairman, Montreal

### **AWARD OF THE ARBITRATOR**

The issue in the present dispute is relatively narrow. The Union maintains that by the application of article 12.6 of the collective agreement, part-time employee C. Stracuzza, who is senior to full-time employee C. Lamont-Martin, should have been awarded a bulletined full-time position in London under article 12.6 of the collective agreement.

The parties' collective agreement clearly contains extensive distinctions between full-time and part-time employees. With respect to part-time employees article 4.29 is significant and provides as follows:

- 4.29 a)** The following work rules apply to part-time employees: Articles 4.12 to 4.28, 5.3, 5.8, 8.2, 8.5(b), 8.5(c), 8.7, 9.23, 9.24, 9.25, 11.1, 12.7(a), 13.3(b), 13.5, 13.13, 13.14, 13.15.
- b)** Part-time employees remain governed by any articles in the Collective agreement outlining employees' rights, benefits and obligations other than work rules.

The Corporation submits that the parties adverted narrowly to the rights in respect of work rules which could be exercised by part-time employees. It appears clear from the language of the article that article 12 is considered to be a work rule. I must agree with the Corporation's representative that article 12.6, which governs the granting

of positions "... to the qualified senior employee on the Region" is not an article which applies to part-time employees. That, in my view, is the unavoidable conclusion to be drawn from the language of article 4.29(a) of the collective agreement. That article specifically applies article 12.7(a) to part-time employees, giving them first access to temporary vacancies of ten working days or less or to vacancies in positions pending the occupancy of a successful applicant. By contrast, the governing work rule for the awarding of permanent positions to qualified senior employees, article 12.6, is clearly not stated as being among those which apply to part-time employees. For reasons which they best appreciate, the parties have so arranged the relative rights of part-time and full-time employees.

Based on the foregoing, the Arbitrator is compelled to agree with the Corporation. As a part-time employee, albeit with longer service than the full time employee who was awarded the position, the grievor cannot assert any right under article 12.6 of the collective agreement, as that article is specifically excluded from the list of work rules which apply to part-time employees, as clearly enunciated in article 4.29(a) of the collective agreement.

For these reasons the grievance must be dismissed.

July 26, 2012

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

