

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1118

Heard at Montreal, Tuesday, July 5, 1983

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Thirty-three employees claiming payment under articles 4.12 and 4.27 (a) of Agreement 2.

JOINT STATEMENT OF ISSUE:

A system wide survey was conducted for the Corporation whereas employees were contacted by telephone at home to gather their comments on a new concept for uniforms.

Of those contacted, thirty-three VIA Quebec employees – 17 regularly assigned and 16 working from the spare board – claimed payment under the provisions of article 4.27(a) and article 4.12 respectively.

The Corporation rejected the time claims submitted by the above-mentioned employees.

The Brotherhood subsequently submitted a grievance for payment on behalf of the employees.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

(SGD.) A. GAGNÉ
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger	– Labour Relations Officer, Montreal
A. R. Cave	– Manager, Human Resources, Montreal
C. O. White	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
R. McGregor	– Executive Assistant, Ottawa
T. McGrath	– National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Article 4.12 of the collective agreement is as follows:

4.12 Spare employees performing unassigned service will be paid on a minute basis with minimum of four hours for each call for terminal duty, and minimum of four hours for a one-way trip and 8 hours for a round trip.

Article 4.27(a) is as follows:

4.27(a) Regularly assigned employees notified or called to perform terminal work not continuous with, before or after, their regular assignment shall be paid for time worked at the rate of time and one-half with a minimum of three hours at the rate of time and one-half for which three hours' service may be required. Such time shall be paid over and above guarantee and shall not be included in the accumulation of hours under article 4.2(b).

Payment under either of these provisions is dependent (in the case of article 4.12) on employees' "performing unassigned service" or (in the case of article 4.27), on their being "notified or called to perform terminal work".

It is clear from the facts of this case that neither "service" nor "terminal work" was performed. The grievors were contacted by a survey company which sought their comments on new uniforms. The employer may require employees to wear uniforms, and where it does so, it must issue the uniforms to employees without cost, pursuant to article 15 of the collective agreement. The Company quite rightly as a matter of courtesy and good labour relations – sought to obtain the views of employees with respect to the uniforms they might be required to wear. It arranged for an opinion-survey company to contact employees independently by telephone to obtain their views, to analyse them, and to report. The employees were not obliged to respond to these question, although one would think it was in their interest to do so. It would appear that most employees did in fact respond courteously to the courtesy shown. Conversations of that sort, while relating to the employees' work in a general way, were not themselves work, and employees were not "at work", "on duty", performing "service" or "called to perform terminal work" while they were participating in these conversations or responding to the survey company's questions. They were, then, not entitled to payment under the provisions referred to.

The grievances are accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR