

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1265

Heard at Montreal, Wednesday, July 11, 1984

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Time claim G. Theberge, VIA Ontario.

JOINT STATEMENT OF ISSUE:

Following a death in the grievor's family, September 29, 1983, Mr. Theberge, a spare board employee, was granted Bereavement Leave on September 30, October 1 and 2 in accordance with article 27 of the Agreement.

Since Mr. Theberge's leave expired October 2, the first time he was required to be available for work was during calling hours of October 3.

The Brotherhood requested payment for a trip for which the calling hours were October 2.

The Corporation has rejected the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) A. GAGNÉ
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger – Manager, Labour Relations, Montreal
C. O. White – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

F. C. Johnston – Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The simple issue raised in this case is whether a spareboard employee on bereavement leave is entitled to compensation for a missed call on the day of bereavement for a run that is scheduled after his three day bereavement leave expires.

In the grievor's case the last day of his three day bereavement occasioned by his father's death was on October 2, 1983. His turn to be called off the spareboard for a two day return run ex Toronto Chicago for October 3 and 4 arose on October 2. Because of the agreed understanding between the Trade Union and the Employer, the Employer was prohibited from calling Mr. Theberge on October 2, 1983 for that call. Accordingly, the Employer went to the next person on the spareboard to take that run. The Trade Union grieves that Mr. Theberge should have been paid for the two days loss of earnings resulting from the missed call.

Article 27 of the collective agreement reads as follows:

Upon the death of an employee's spouse, child, parent, brother, sister, step-parent, father-in-law or mother-in-law, the employee shall be entitled to three days' bereavement leave without loss of pay provided he has not less than six months cumulative compensated service. It is the intent of this article to provide for the granting of leave from work on the occasion of a death as aforesaid and for the payment of his regular wages for that period to the employee to whom leave is granted.

The Trade Union argues that the grievor is entitled to be compensated for all financial loss that may arise from his unavailability on the days designated for his bereavement leave. Since Mr. Theberge was not available to take the call for the run on October 3 and 4, because such call would have intruded on the last day of his bereavement leave, he should be entitled to the receipt of his loss wages for those days. In this regard, the parties are agreed that any loss of wages that resulted from scheduled runs to which he would have been called on the very days designated for bereavement leave would be payable to the grievor. And, in this regard since the grievor missed a run on October 1, 1983, he was paid accordingly.

The Employer insisted that the grievor's entitlement to be compensated is restricted to the loss of wages he would have received for the missed calls that coincided with the designated days of his bereavement leave. Since the missed run complained of occurred after his bereavement leave expired the grievor was not entitled to the loss of earnings for those days. Or, to allow the grievor's grievance would result in a financial burden to the Company that was not contemplated by article 27 of the collective agreement.

In dealing with the parties' submissions, I am satisfied that although the grievor's loss on the days in question flowed from his unavailability to accept a call off the spareboard on his last day of bereavement leave, the actual loss did not relate to a loss of wages that coincided with the days designated for bereavement leave. Article 27 expressly restricts its "intent" to provide for the granting of leave from work on the occasion of a death as described and "for the payment of regular wages for that period to the employee to whom leave is granted". In other words, although the grievor's missed call for the run is attributable to his bereavement leave no regular wages were lost "for that period" comprising his three day bereavement leave. The loss of earnings clearly occurred after his bereavement leave had expired.

In my view, contrary to the Trade Union's submission, the interpretation of article 27 advanced herein is consistent with **CROA 119**, where entitlement for loss of wages during a bereavement leave was restricted "to the actual mileage they would have worked on the days in question". Accordingly, for the reasons expressed, the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR