

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1117

Heard at Montreal, Tuesday, July 5, 1983

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Counter Sales Agent requesting the right to wear a 'ban the bomb' button while on duty.

JOINT STATEMENT OF ISSUE:

On November 1, 1982, the grievor, Mr. John Evans, was working as Counter Sales Agent 1, Union Station, Toronto.

While on duty at the ticket counter, the grievor was wearing a 'ban the bomb' button on his jacket. Supervisor J. Presseault, aware of the variety of opinions among VIA's patrons and the commitment to serve them in a professional manner free of political connotations, asked Mr. Evans to remove his badge.

The grievor refused to comply stating that he firmly believed in the cause and that it was his right to advertise his views.

Since the ticket counter was not busy and there were many cancellations to handle in the back office, the grievor was asked by his supervisor to close his wicket and assist another employee with the cancellations.

A grievance was initiated by the employee requesting the right to wear his button while on duty.

The Corporation rejected the grievance at all steps of the grievance procedure.

The Corporation maintains that this grievance does not meet the requirements of Article 25.2 of the Collective Agreement 1 and, as a result, is not arbitrable.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH  
National Vice-President

FOR THE CORPORATION:

(SGD.) A. GAGNE  
Director, Labour  
Relations

There appeared on behalf of the Corporation:

Andre Leger	- Labour Relations Officer, VIA Rail, Montreal
A. Broux	- Human Resources Officer, VIA Rail, Toronto
J. F. Presseault	- Assistant Supervisor, VIA Rail, Toronto
C. O. White	- Labour Relations Assistant, VIA Rail, Montreal

And on behalf of the Brotherhood:

R. McGregor	- Executive Assistant, CBRT&GW, Ottawa
T. McGrath	- National Vice-President, CBRT&GW, Ottawa
G. Thivierge	- Regional Vice-President, CBRT&GW, Montreal
J. Evans	- Grievor, CBRT&GW, Toronto

#### AWARD OF THE ARBITRATOR

The grievor was not "disciplined" in the sense that any penalty was imposed on him, or any adverse notation made on his discipline record. This is not, however, a grievance relating to the general exercise of management rights, or to the general reasonableness of the Company's rules or procedures. Such general questions might well not be arbitrable. The instant case is one of discipline in the sense that the grievor was given a direct instruction with respect to his comportment, that is, his wearing of a badge while at work. He complied with that, knowing that if he did not do so, disciplinary measures would be taken. There is, then, a particular set of circumstances in issue. The grievor, quite properly, followed the requirement that he should "obey now and grieve later". His right to grieve cannot now be denied, and the matter is arbitrable.

Many arbitration cases have dealt with matters of employees' personal appearance, or deportment, while at work. A number of questions may arise with respect to employers' promulgation and enforcement of rules relating to such matters. Various ancillary matters, such as the requirement of bringing particular rules (apart from those implicit in any working situation) to the employees' knowledge, the equitable application of rules as between employees and the like may arise. In the instant case, however, the only issue of substance is as to the reasonableness of the employer's requirement that the grievor not wear a "ban the bomb" button while at work serving the public. The rule, it appears, is not narrowly discriminatory, but consists in a general prohibition against the wearing of buttons which state social or political commitments, while employees are at work serving the public.

Of course everyone is entitled to his or her beliefs, and to give expression to them. There are limits to the rights of free speech and free expression, however, and these limits are generally to be found at the point where the exercise of such rights impinges on the freedom of others. What is difficult is to determine, in any particular circumstances, is whether or not that point has been reached. Such determinations involve consideration of the several interests, both individual and social, which may be involved, and an assessment of the particular facts of each case.

In the instant case, the interests of both the grievor and the employer are legitimate ones. The grievor, as I have said, has a right to his opinions, and a general right to express them. The

employer has a right to conduct its operations in an orderly way, and in particular a right - perhaps to some extent an obligation - to require that its employees who serve the public do so in a proper fashion. Here, in furtherance of its policy to serve the public "in a professional manner free of political connotations", the employer enforces a rule prohibiting the wearing of buttons which state social or political commitments, while employees are at work serving the public. Is the enforcement of that rule a reasonable exercise of the employer's management function?

The "button" in question is a circular badge about one and one-half inches in diameter. It shows, against a white background, the black mushroom cloud of a nuclear explosion. There is a red circle around the circumference, and a diagonal red stripe. There is no text. The message is, however, clear, and the badge is a striking (but not garish) statement on a very serious subject. It may be added that there is no question as to the grievor's sincerity in making such a statement.

The badge I have described may properly be called a "public statement". Its natural effect is to attract attention and, in my view, to create a reaction in those who see it. Such a badge may be distinguished, I think, from small emblems which are frequently worn and which indicate membership in an organization such as a service club, or the achievement of some award. Prohibition of the wearing of "buttons" of that sort (perhaps even one indicating membership in the "ban the bomb" movement!) is not quite the equivalent of the prohibition involved here. In the instant case, what is involved is a public address, as opposed to a private statement.

It is significant that the prohibition in question here applies where employees are dealing with the public. Different considerations would arise were such a prohibition applied to office or warehouse employees, or to persons working in an industrial plant, although there could well be circumstances which would justify an employer in enforcing such a rule in those places. The grievor in this case is a Counter Sales Agent, and his job is to sell tickets to passengers at the ticket counter. Any passenger doing business with the Company through the grievor will thus be subjected to the grievor's message, that is, to the statement of the grievor's views, plainly and very noticeably expressed by the badge in question. This is not the same thing as being subjected to the Company's advertising, which has sometimes been displayed on similar badges, nor is it comparable to being subjected to a clerk's views on the weather, or to a statement of his support for, say, a hockey team. The subject of the grievor's message is, in part because it involves such a serious matter, an emotional one, and one on which there are strong views on different sides of the question.

When passengers come to the ticket counter, they come to do business with the Company. The Company does business through its agents, including the grievor, who acts for and represents the Company in those transactions. In my view, it is reasonable for the Company, in its transactions with the public, to take a businesslike approach; to refrain from passing on to its customers its own views on controversial political or social matters, and to impose similar

restraints on its employees while they are acting as its agents. The employee, while carrying on the employer's business with the public may, in my view, properly be restrained from taking advantage of the forum provided by his work to give public expression to his personal views.

Accordingly, it is my conclusion that the rule promulgated by the employer in this case is a reasonable one, and that the grievance requesting the right to wear the badge in question while on duty, must be dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.