

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1169

Heard at Montreal, Tuesday, January 10, 1984

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Pay claim of Counter Sales Agent R. Thompson, Toronto.

JOINT STATEMENT OF ISSUE:

On April 15, while on duty, the grievor wore a non-regulation sweatshirt over her uniform blouse, in violation of the Corporation's written dress code. The grievor was asked to remove her sweatshirt but refused.

As an alternative, the grievor was requested to go home to change. When the grievor failed to return to complete her shift, she was docked 3 hours and 45 minutes.

The Brotherhood requested that Ms. Thompson be paid for lost time.

The Corporation rejected the Brotherhood's request.

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,	- Manager, Labour Relations, VIA Rail Canada, Montreal
H. J. Campbell	- Manager, Human Resources, VIA Rail Canada, Toronto
Ms. M. McKenzie	- Supervisor Ticket Sales, VIA Rail Canada, Toronto
Ms. B. Walker	- Supervisor Ticket Sales, VIA Rail Canada, Toronto
C. O. White	- Labour Relations Assistant, VIA Rail Canada, Montreal

And on behalf of the Brotherhood:

R. G. Gee	- Staff Representative, CBRT&GW, Toronto
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AWARD OF THE ARBITRATOR

On March 23, 1983, the Company issued a written directive to all Counter Sales Agents at Toronto pertaining to dress regulations. The dress code required all employees to wear clothing that would not hide the shirts and ties or blouses and ascots distributed to them. As a result pullovers, turtleneck sweaters and like apparel that concealed the said clothing was prohibited.

The grievor refused to comply. On March 26, 1983, she wore a sweat shirt over her blouse thereby concealing the said apparel contrary to the Company's directive. When the grievor refused to remove the sweat shirt and accept her supervisor's suggestion that she wear a "VIA" uniform jacket she was requested to go home and change.

The grievor went home but did not return to work until the following day. Because the grievor did not return to complete her shift she was docked three hours and forty-five minutes from her pay cheque.

The trade union had launched a grievance contesting the "reasonableness" of the company's directive of March 23, 1983, alleging that the dress code violated Article 27.6 of the collective agreement. That grievance was abandoned short of arbitration. The trade union grieved the company's decision to dock the grievor for the three hour and forty-five minute period she failed to complete her shift.

I am satisfied, particularly in light of the trade union's decision to withdraw its grievance, that the directive relating to the dress code required of its sales agents was "reasonable" and was adopted for a legitimate, business purpose. Moreover, I am satisfied that the grievor during the course of her shift deliberately challenged her supervisor's decision to implement the company's dress code with respect to her. In that sense the grievor was insubordinate and should have been disciplined for her misconduct. But she wasn't.

It is settled arbitral law that an appropriate response by an employer to the misconduct of its employees is a disciplinary sanction. In this case the company penalized the grievor through a deduction of monies that she would have otherwise have earned had she been allowed to complete her shift. The company in doing so, deprived the grievor of her right to a "full and impartial hearing" as required by the collective agreement prior to the imposition of such discipline. Moreover, the company prejudiced the grievor's rights with respect to the onus of proof that is normally imposed on an employer in establishing just cause for discipline.

In my view it is not an answer for the company to say that its objective was not disciplinary. The grievor had made up her mind to defy the company's directive and her refusal to return to work upon being directed by her supervisor to go home to change was a continuation of that challenge. Indeed, the company's own brief accurately characterized her misconduct by saying that "the grievor willfully and deliberately refused to obey her supervisor's instructions to comply with the Dress Code".

In short, in docking the grievor's pay for the hours not worked at

the instance of her supervisor, the company failed to respond in an appropriate and correct manner to the situation. The grievor should have been suspended. As a result, I am reluctantly compelled to direct that she be compensated for the monies lost.

DAVID H. KATES,
ARBITRATOR.