CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1202

Heard at Montreal, Tuesday, March 6, 1984

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim for overtime hours under Article 4 of Agreement 2.

JOINT STATEMENT OF ISSUE:

Due to an operational change within the railway, Ms. Restiaux operated from the spare board with maintenance of earnings protection under the provisions of the Special Agreement.

The grievor refused a work assignment from December 23 to 27, 1982, which necessitated the reduction of guarantee protected hours by 36.17 in conformity with the Collective Agreement.

Since the grievor's total hours worked during the eight week averaging period was not in excess of 320 hours, the 36.17 hours was paid at straight time.

The Brotherhood contends that the 36.17 hours should be paid at time and one half.

The Corporation has rejected the grievance.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) TOM McGRATH	(SGD.) A. GAGNE
National Vice-President	Director, Labour Relations

There appeared on behalf of the Corporation:

Andre Leger	- Manager, Labour Relations, VIA Rail Canada, Montreal
C. C. Bright	- Manager, Human Resources, VIA Rail Canada, Winnipeg
C. 0. White	- Labour Relations Assistant, VIA Rail Canada Montreal

And on behalf of the Brotherhood:

Wm. M. Matthew	- Regional Vice-President, CBRT&GW, Winnipeg

AWARD OF THE ARBITRATOR

It is common ground that the guaranteed earnings protection of 320 hours in an eight week averaging period is not provided for under the collective agreement. Nonetheless, the Company does pay employees assigned to the spareboard a guarantee of 320 hours provided all opportunities to respond to calls are answered. In the event an employee does not respond to a call the appropriate penalty is imposed reducing the employee's guarantee. Moreover, any hours worked beyond 320 hours in an eight week period are paid at the overtime rate.

During the eight week averaging period between December 17, 1982 and February 10, 1983, the grievor worked 66.5 hrs during the first two weeks. She also rejected in that period an opportunity to respond to another run for which she was appropriately deducted an amount from her guaranteed earnings. On December 31, 1982, the grievor was laid off. She was paid for the 66.5 hrs. worked during the two week period at the straight time rate.

The trade union alleges that the grievor's period of wage averaging for her earnings protection guarantee ought to have been reduced pro rata to eighty(80) hrs. owing to her lay off. Accordingly, it was submitted that she should be paid 36 hours at the overtime rate of pay during that period. Because no provision of the collective agreement applied to the trade union's claim reliance was made on the relevant provisions of the Canada Labour Code, Part (III) and the regulations thereto in support of its position.

I must agree with the company's submission that the issue raised by the grievor is more appropriate for a complaint with the relevant authorities who administer the Canada Labour Code and the regulations thereto. Although an Arbitration Board does have jurisdiction to interpret the provisions of the Code and regulations as an incident to the interpretation of the provisions of a collective agreement, no provision of the collective agreement was relied upon by the trade union with respect to an employee's residual rights to overtime once the guaranteed wage over the eight week averaging period is reduced by virtue of a lay off.

The truth is that no provision of the collective agreement has been alleged to have been violated. And, indeed, on the face of the grievance the grievor is shown to have only worked 66.5 hrs. in an eighty hour work period. Both in the context of the collective agreement and the Code no prima facie entitlement to overtime has been demonstrated. What the facts do demonstrate is that the grievor, once disposed to work, was paid an appropriate amount at the straight time rate.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.