CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1334

Heard at Montreal, Wednesday, February 13, 1985

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT
AND GENERAL WORKERS.

DISPUTE:

Alleged violation of Article 4.1 of Agreement 2, hours of work and overtime.

JOINT STATEMENT OF ISSUE:

General bids are posted twice a year, in the Spring and the Fall, abolishing all assigned runs that existed at the time, and advertising all of the succeeding assigned runs that will be in effect for the next five to seven months.

Following the posting of the October 1983 general bids, the Local Chairman, John J. Huggins at Toronto filed a grievance claiming that the hours to be worked by the Sleeping Car Porters and Service Managers, reflected on the Operation of Run Statements were, in certain iour 1veek periods, in excess of 160 hours and as such, violated Article 4.1 of the Agreement.

While the Brotherhood maintains that the purpose of the grievance is not to request payment or additional days off for the previous general bids, it asks that rectification be applied to all subsequent general bids.

The corporation contends that the hours of assignments do indeed represent an average of 160 hours per basic four 1veek period and as such, are in accordance with Article 4.1.

The Corporation rejects the Brotherhood's contention.

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

There appeared on behalf of the Corporation:
Andre Leger - Manager, Labour Relations, VIA Rail Canada Inc., Montreal

J. Kish - Asst. to General Manager, 0.B.S., VIA Rail Canada Inc., Montreal

Andre Parent - Analyst, Labour Relations, VIA Rail Canada Inc., Montreal

And on behalf of the Brotherhood:

Bob Gee - Representative, CBRT&GW, Don Mills

AWARD OF THE ARBITRATOR

Article 4.1 of collective agreement No. 2 reads as follows:

> "The principle of the 40-hour week is recognized and an average of 160 hours in assigned service shall constitute a basic four week period."

It is common ground that, despite the peculiar operational demands of the company's passenger rail enterprise, the objective of Article 4.1 is to enable an individual employee to discharge his regular work assignments within the approximate period of the forty hour work week normally worked by the public at large. Article 4.1 acknowledges, owing to the nature of the company' rail passenger service, that some flexibility must be reserved to the employer in its achievement of that objective. A four week representative period is accordingly designated within which the work assignments given an employee may require some variance in the number of hours worked in a peculiar work week that may be above and below forty hours. However so long as the employer, in the assignment of tasks within the designated four week period, does not impose upon a particular employee an average of more than 160 hours work the objective contemplated by Article 4.1 will still have been met. Any hours worked in excess of an average of 160 hours during the four week representative period will clearly constitute a derogation of the company's commitments under Article 4.1. In short, it is my view that the plain language of Article 4.1 supports the aforesaid interpretation of the company's commitment.

Moreover, it is also clear that what the employer has propos in meeting the objective of Article 4.1 derives no legitimate support from the language of that provision. Indeed, to some extent, Mr. Leger acknowledged "the silence" of Article 4.1 of the collective agreement with respect to the employer's approach to meeting its obligation. That approach entails the designation of a six month representative period during which period the employer, on average, must achieve within several blocks of 160 hours (i.e., 28 days) the elusive goal of a forty hour work week. Accordingly, over the course of that six month period the employer has calculated, having regard to the considerations of the peculiar rail passenger run (i.e., the work assignment) and the total number of hours required of the members of the run's crew, the total number of hours that should be

assigned to an individual employee during a twenty-eight day period. And, so long as, on average, the total number of hours worked in successive twenty-eight day blocks spread over the designated six month period do not exceed 160 hours the employer insists it has complied with the objective of approximating the forty-hour work week contemplated by Article 4.1.

It is patently obvious that the clear language of the collective agreement provides no support for the employer's approach. The employer's admitted evidence, as disclosed in the appendices attached to its written brief, show that in any given block of 28 days an individual employee's work hours either may grossly exceed 160 hours or may fall drastically short of 160 hours. In either situation given the nature of these crests and valleys the objective of Article 4.1 in approximating a forty hour work week for the individual employee within a four week representative period is not seen to be close to realization.

The truth of the matter is that the employer, owing to the exigencies of its rail passenger service and the obligation it has made to its employees under the collective agreement for a guaranteed work week, was compelled to take into account extraneous considerations in meeting its perceived obligations under Article 4.1. And, solely by contriving the fictitious representative period of six months has the company been able to accommodate all these coxmitments, including the efficient and expedient operation of its rail passenger service, and still convince itself that it has complied with the exigencies of Article 4.1. In summary, the company has clearly made an improvident commitment under Article 4.1 that cannot be met by the approach it has adopted and described herein.

Moreover, it is my view that Article 4.2 provides no assistance in supporting the company's approach. Article 4.2 deals with the manner an employee's pay is calculated. Hours worked in excess of 160 hours obviously will attract the overtime rate. It should be made perfectly clear that Article 4.1 does not prevent the employer from requiring its employees to work more than 160 hours in a particular pay period. When such requirement is made that employee is entitled to payment at the overtime rate. Article 4.1 simply imposes upon the employer the obligation to approximate an average 40 hour work week within a four week period. In meeting that objective (and save for the exceptions that are contemplated) the employer is intended to refrain from "normalizing" as part of an employee's regular work schedule the requirement for overtime.

For all the foregoing reasons the grievance succeeds. I shall remain seized with respect to an appropriate direction.

DAVID H. KATES,
ARBITRATOR.