CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 30

Heard at Montreal, Monday, March 21st, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (SD & PC DEPT.)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the right of the Company to release employees assigned to Train No. 1, Montreal to Sudbury, from duty one hour and 25 minutes prior to arrival Sudbury, the turn-around point of the assignment.

JOINT STATEMENT OF ISSUE:

On September 20th, 1965, the Company posted a Form D.C. 168, Operation Schedule, to be effective October 1st, 1965.

The Operation Schedule posted showed the employees being released at 10:00 P.M., one hour and 25 minutes prior to arrival of Train No. 1 at Sudbury.

The Brotherhood contends that this is in violation of Article 3, Clause (a), of the Collective ?greement.

FOR THE EMPLOYEES:	FOR THE COMPANY
(Sgd.) J. R. BROWNE	(Sgd.) THOS. P. JAMES
GENERAL CHAIRMAN	MANAGER, S.D.P.C. & N.S.

There appeared on behalf of the Company:

T. P. James	Manager, S.D., P.C. & N.S. - C.P.R., Montreal
J. W. Moffatt	Gen. Supt., S.D., P.C. & N.S. - C.P.R., Montreal

And on behalf of the Brotherhood:

J. R. Browne	General Chairman, B.R.T., Montreal

AWARD OF THE ARBITRATOR

Article 3 reads:

> (a) Time will be computed as continuous from time required to report for duty at designated terminal until released at other designated terminal, subject to deductions for rest periods en route and at turn-around point. No deductions for release time less than two (2) hours will be made.

As indicated in the Statement of Issue the Company posted an operation schedule, effective October 1, 1965, showing the employees in question being released at 10.00 p.m., one hour and twenty-five minutes prior to arrival of Train No. 1 at Sudbury.

The employees in question are provided with sleeping accommodation in a dormitory car that accompanies this train to Sudbury, where it is cut out along with the dining car.

It was Mr. Browne's contention there is no provision in the agreement permitting the Company to put crews on rest at 10.00 p.m. and then on release time at 11.25 at the away from home terminal. What the Company was attempting to do was to combine overnight rest with terminal releases in order to eliminate payment of time until arrival in Sudbury. The sentence reading "No deductions for release time less than two hours will be made" has no application, because the time involved as a rest period before arrival and release is one hour and twenty-five minutes.

For the Company Mr. James contended Article 3 (a) places no limitation on the Company with respect to deduction for rest en route. He urged the absence of a comma after the term "enroute" permitted it to be combined with what followed "and at runaround point" This would then permit a longer period than two hours being deducted.

Mr. James pointed to the fact that the practice of releasing dining car crews on the Montreal-Sudbury line at 10:00 p.m. when sleeping accommodation has been provided in a dormitory car on the train has been followed since the inauguration of the assignment in April, 1955. Until November, 1965, the employees on this line have always made out their time claims in accord with the operation schedule. During that entire period no claim has been made by the Brotherhood in respect of this operation schedule.

Although claiming that in his opinion there was no ambiguity in this provision, Mr. James referred the Arbitrator to a decision by Mr. Justice Gale in the matter of Dominion Steel and Coal Corporation and U.S.W., in which it was held:

> "It needs very little authority to support the proposition that where there is ambiguity on the face of the document, extraneous evidence may be admitted to explain the ambiguity."

To this submission Mr. Browne referred to the Arbitrator to what was held by him in Case No. 11, to the effect that no matter how long either party to an agreement had erroneously interpreted a provision, it was the duty of an Arbitrator to bring it back to the proper course when it became apparent.

A study of the Article convinces the governing words for time computation on this run for these employees are "until released at other designated terminal", and that in the circumstances of this particular operation only the one hour and twenty-five minutes can properly be deducted as a rest period "enroute". From ten p.m. these employees, while approaching a point to be reached in less than two hours where they are released, are in the meantime captive. While sleeping accommodation is provided for them, there is no requirement that they take advantage of it precisely at ten p.m. or until after the time of arrival. They are free, as suggested by Mr. Browne upon arrival in Sudbury to seek sleeping accommodation elsewhere, as long as they arrive in time for their return assignment. This marks clearly, in my opinion, the line between the significance to be placed upon "release at their designated terminal" and "rest period" once they arrive there.

I believe language other than that used would be necessary to make applicable the interpretation that has been placed upon this provision on this particular run.

For these reasons I find this claim is granted.

Dated at Brampton, Ontario this 28th day of March 1966.

J. A. HANRAHAN
ARBITRATOR