

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.75

Heard at Montreal, Monday, September 11th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (SD & PC DEPT.)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Steward F. R. Graham and crew for eight hours' pay for the rest period, 10.00 p.m. to 6.00 a.m., the night of June 5 - 6, 1967.

JOINT STATEMENT OF ISSUE:

Steward F. R. Graham and crew arrived Toronto on delayed Train No. 12 at 6.45 a.m. June 6th, 1967. Had the train been on time it would have arrived at 5.45 p.m. June 5th. The Company deducted fifteen hours rest from the total elapsed time, Winnipeg to Toronto; i.e. seven hours for the first night and eight hours for the second night.

The Brotherhood contends that only seven hours should have been deducted as this is the amount shown in the Operating Schedule, and that, therefore, the Company is in violation of Article 3 (a) of the Contract.

FOR THE EMPLOYEES:

(Sgd.) J. R. BROWNE
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) THOS. P. JAMES
MANAGER, S.D.P.C. & N.S.

There appeared on behalf of the Company:

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

This problem involves a determination as to whether the information contained in an operation schedule as to rest periods enroute is to prevail over that the Company claims is the governing provision, namely Article 5 (a) of the Agreement.

The operating schedule in question was produced. It showed that the crew was required to report at Winnipeg for Train No. 2 at 10.45 a.m. On the date in question this train did not arrive at Winnipeg until 10.10 p.m. The crew, of course, were under pay for the full 11 hours and 25 minutes during this interval.

The schedule also called for twenty-three hours and twenty minutes for time on duty on the return trip. Because of the late arrival of Train No. 2 at Winnipeg and the consequent late arrival of Train No. 12 at Toronto, this crew were actually paid twenty-eight hours, said to be in accordance with Article 3 (a), from scheduled reporting time at Winnipeg until released at their home station, less rest periods en route.

The schedule showed only a rest period enroute for the first night as from 22.00k to 6.00k. Because of the delay noted a deduction of eight hours rest was made for the second night between Winnipeg and Toronto on this train.

For the Brotherhood it was admitted that the operating schedule does not override the provisions of the collective agreement, but this was qualified by stating that this was so only when the operating schedule is in conflict with the provisions of the collective agreement.

It was claimed by the Brotherhood that the operating schedules are not, as claimed by the Company, "of a general nature" and that they must be specific in all details in order that an employee will know the conditions of the assignment before exercising seniority to bid for same. It was also contended that once the operating schedules are set up to conform with the collective agreement, are posted for bid, and employees are assigned by right of seniority and bid, the conditions of the assignments are binding on both the employees and the Company.

For the Company it was submitted Article 3 (a) places no limitation on the Company with respect to deduction for rest enroute. It reads in part:

"(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 turnaround point. No deductions for release time less than 2 hours will be made. In regular assignments, this worked in excess of the normal Operating Schedule due to late arrival of trains, up to 576 hours in a Quarter effective June 1, 1967, 576 hours in a Quarter effective December 1, 1967, and up to 520 hours in a Quarter effective June 1, 1960, will constitute part of the regular assignment."

While this Article, it was claimed, placed no limitation on the Company with respect to deduction for rest en route, authority for such a deduction is clearly shown in Article 5, Clause (a), reading:

"Rest Periods for Employees in Service:

- (a) Where overnight travel is involved, a maximum of 8 hours may be deducted for rest between the hours of 10 p.m. and 6 a.m. If an employee, having gone on rest, is called for service early, he will be paid for the time worked in advance of scheduled reporting time at one and one-half times the basic hourly rate, separate and apart from his Quarterly guarantee."

It was contended the only qualification to the provision, as expressed is that its application is confined to runs where overnight travel is involved.

It is clear from the foregoing that the members of this crew were paid in accordance with the provisions of Article 3, apart from the deduction made for the rest period on the second night. The latter, of course, was made necessary by the late arrival of the train at Winnipeg with the consequent late arrival at Toronto.

The information contained in the Operation Schedule as to a rest period of one night, obviously was based on the assumption that the train involved would run on schedule. It did not. The question to be answered then is whether there is anything in Article 3 to provide that in the event an additional rest period is made necessary by a train operating late, it is not to be deducted. I can find nothing to that effect.

I therefore hold the governing words in Article 5 (a) for the purpose of this determination are "where overnight travel is involved." There is no qualification to that general provision. It is clear language that must prevail over and above anything contained in an operation schedule.

For these reasons I find the members of this crew were paid in accordance with the existing provisions of the agreement.

J. A. HANRAHAN
ARBITRATOR