

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 141

Heard at Montreal, Tuesday, January 14th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (S.D., P.C. & N.S.)

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the right of the Company to deduct 2 hours and 55 minutes from the time claims of Stewart R. Binette and Crew arriving Winnipeg, September 16th.

JOINT STATEMENT OF ISSUE:

Steward R. Binette & Crew arrived Winnipeg on delayed train #1, September 16th at 2:00 A.M., 2 hours and 55 minutes late. Steward R. Binette and Crew claimed continuous time until arrival Winnipeg. Time beyond the regular arrival time of the train was disallowed by the Company.

The Brotherhood contends that the Company are in violation of Articles #3 and #5 of the Collective Agreement.

FOR THE EMPLOYEES:

(SGD.) J. R. BROWNE  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T.P. JAMES, MANAGER  
S.D. & P.C. & N.S. DEPT.

There appeared on behalf of the Company:

T. P. James	Manager, S.D., P.C. & News Dept., C. P. R. Montreal
J. W. Moffatt	General Supt., S.D., P.C. & News Dept., C.P.R. Montreal

And on behalf of the Brotherhood:

J. R. Browne	General Chairman, B. R. T., Montreal
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AWARD OF THE ARBITRATOR

The material provisions of the collective agreement are as follows:

"ARTICLE 3 - HOURS OF SERVICE:

- (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 2 hours will be made.

Example

Report home station first day at 12 noon  
Released home station fifth day at 12 noon

Total continuous time. . . . .	96 hours
Deduct rest enroute WB 2 nights . . .	16
Deduct rest enroute EB 2 nights . . .	16
Deduct rest turn-around point. . . . .	5
Total rest . . . . .	37
Hours credited . . . . .	59

If not released for 2 hours or more at turn-around point, no deduction for rest will be made.

In regular assignments, time 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, 546 hours in a Quarter effective December 1, 1967, and up to 520 hours in a Quarter effective June 1, 1968, will constitute part of the regular assignment."

"ARTICLE 5 - 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."

The material provisions of the collective agreement have been considered in certain previous arbitration awards. In Case No. 75 it was held that in the event an additional rest period was made necessary by a train operating late, the additional rest might be deducted from the continuous time. Article 5 provided for such a deduction and there was nothing in article 3 to the contrary. The union now agrees that this was a correct interpretation of the rest rule. In that case the train was very substantially delayed, and it was a question of deducting rest for an entire night.

In Case No. 99 it was held that deduction of two hours and one minutes' rest was properly made in the case of a train arriving on time at Sudbury at 12:01 a.m. It was the union's contention that the ruling in Case No. 75 prevented the company from deducting rest when trains arrive at a terminal prior to 6:00 a.m. In Case No. 75,

overnight travel was involved. It was the arbitrator's view that overnight travel was not involved in Case No. 99 and by the same token it would not be involved in the instant case. In Case No. 99, the arbitrator held that article 3 (a) clearly contemplated an unspecified deduction for a rest period enroute. In Case No. 108 it was held that rest was properly deducted where the train in question arrived at 3:40 a.m. some nine hours and fifty-five minutes late. The crew, as in this case, was released from duty at about 10:00 p.m., and rest was deducted from that time until arrival.

I am unable to see any distinction in principle between the instant case and Case No. 108. In each case the train was delayed, but arrived before 6:00 a.m. In Case No. 108 the arbitrator stated as follows:

"Further study of the provisions in question again supports the conclusion reached in this Arbitrator's previous Awards in Cases 75 and 99: Article 3 contemplates rest periods being deducted. Article 5 specifies the maximum time that may be deducted. Article 5 also shows the parties agreeing on 10.00 p.m. as possible starting time for a rest period.

On the trip in question this crew was released for rest at that hour. Here the term described 'a maximum of 8 hours may be deducted for rest between the hours of 10.00 p.m. and 6 a.m.' becomes important. No more than that period may be deducted for rest, but there is nothing to prevent less than that period being so deducted between the hours designated."

Let me here underline with respect to this provision what I held in Case No. 75:

"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."

Those statements apply precisely in the instant case. It was not argued that those decisions are wrong, and in my opinion, I should follow such decisions unless persuaded that they are wrong. Accordingly, it must be concluded that payment was made in accordance with the provisions of the collective agreement.

J. F. W. WEATHERILL  
ARBITRATOR