

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 327

Heard at Montreal, Tuesday, December 14, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Time claims submitted by Steward D. A. Dalby and crew, Sleeping Car Conductor E. H. Brisco and Porter A. McCutcheon.

JOINT STATEMENT OF ISSUE:

Due to a service disruption on the Albreda Subdivision on April 29, 1971, Train No. 1 enroute Winnipeg to Vancouver was rerouted at Jasper and returned to Winnipeg arriving that point May 1 and departing the same date. The employees mentioned above were assigned to this movement.

The Brotherhood claims that under the terms of Article 4.21, of Agreement 5.8, these employees are entitled to payment for layover time in Winnipeg on May 1.

The Company contends that the provisions of Article 4.21 do not apply in this circumstance and the claims were declined.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER  
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) K. L. CRUMP  
ASSISTANT VICE-PRESIDENT,  
LABOUR RELATIONS

There appeared on behalf of the Company.

O. W. McNamara	System Labour Relations Officer, C.N.R., Montreal
C. C. Bright	Manager, Customer & Catering Services, CNR, Montreal
L. Johnson	Supt., Customer & Catering Services, CNR, Vancouver
R. Arnold	Supt., Customer & Catering Services, CNR, Montreal

And on behalf of the Brotherhood:

R. Henham	Regional Vice President, C.B.R.T., Vancouver
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J. A. Pelletier

National Vice President, C.B.R.T., Montreal

AWARD OF THE ARBITRATOR

Article 4.21, relied on by the Union, is as follows:

"Employees required to remain in service on their assignments beyond the hours or days shown on the O.R.S. due to late train arrivals at home or distant terminal, or if they are operated beyond the distant terminal of their run, deduction of rest shall be as shown on the O.R.S.

"Example:

O.R.S.		Delayed Operation
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	1st day	
Ex home terminal		Ex home terminal
	2nd day	
Arr distant terminal (R)		Arr distant terminal (R)
	3rd day	
Ex distant terminal (R) (R)		Ex distant terminal late
	4th day	
Arr home terminal		En route (N.R.)
	5th day	
Layover		En route (N.R.)
	6th day	
Ex home terminal		En route (N.R.)
	7th day	
Arr distant terminal (R)		En route (R)
	8th day	
Ex distant terminal (R)		Arr home terminal (R)
(R)	Rest deductible	
(N.R.)	No rest deductible	

In the instant case, the grievors were required to remain in service beyond the hours or days shown on the O.R.S. They left Vancouver on April 26, 1971, and arrived in Winnipeg, as scheduled, on April 28. They departed from Winnipeg on the return trip to Vancouver, later that day. For this first layover at Winnipeg, rest was properly deducted. The return trip to Vancouver was, however, delayed by reason of a derailment on the Albreda Subdivision. They were therefore rerouted, as set out in the Joint statement. In my view, it is fortuitous that they were rerouted back to Winnipeg; the same issue would arise had they been required to lay over for a time at

any other point. In this grievance, a claim is made for the layover time at Winnipeg on May 1. It is, as the Union quite properly points out, irrelevant that not all employees who may have been entitled to claim have done so.

May 1 was the sixth day to which the operation of run statement applied, and it does not provide for the deduction of rest on that day. It is the Company's position, however, that article 4.21 does not apply at all in respect of time released from duty. Rest is deductible or not deductible, it was argued, only with respect to elapsed time on route as indicated on the O.R.S. Certainly it is the total of elapsed time from which rest is to be deducted or not. But article 4.21 expressly contemplates the case of delayed operations. As the example makes clear, where employees are still in service on days when they would otherwise expect not to be, no rest is deductible. In the example to article 4.21, the fifth day, according to the O.R.S., was a day of layover at the home terminal. Because of delay, employees are en route at that time. No rest is deductible. In the result, a larger payment is received, and understandably so. In the instant case, the sixth day was, according to the O.R.S., to be a day of layover for the grievors in Vancouver. Instead, by reason of delay, they were in Winnipeg. As I have suggested, the same question would arise wherever they might happen to be at the time. It would be no solace to them to be told they were "out of service" for that time for their being in that location at all was the direct result of the delay referred to.

It was argued by the Company that rest is only provided with respect to night hours. Article 4.17 of the agreement sets out what are to be the time deductions for rest periods, and these are expressed in terms of nights and in some cases in terms of particular periods of time. The question which arises under article 4.21, however, is as to the deduction of rest periods in accordance with the O.R.S. from the total elapsed time of the operation. It is not a question of whether employees in fact rest at any particular time, but rather one of the amounts of time, with respect to each day of the operation, to be deducted from the time for which employees may claim payment. The example to article 4.21 shows several instances of days for which no rest is deductible. This is not to say that the employees may not rest on such days, it is only the method which the parties have agreed to for compensating employees in the situations to which the article applies.

In my view, this is a case to which Article 4.21 applies, and the grievance is accordingly allowed.

J. F. W. WEATHERILL  
ARBITRATOR