

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY

TO

CASE NO. 327

Heard at Montreal, Tuesday, December 14, 1971

and

Tuesday, May 9th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

There appeared on behalf of the Company: May 9th, 1972

O. W. McNamara	System Labour Relations Officer, C.N.R., Mtl.
C. C. Bright	Manager, Customer & Catering Services, C.N.R., Montreal

And on behalf of the Brotherhood:

J. A. Pelletier	National Vice-President, C.B.R.T., Montreal
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SUPPLEMENTARY AWARD OF THE ARBITRATOR

The parties have been unable to agree as to the amount of payment to be made to the grievors pursuant to the Award in this matter. The claim which was dealt with in the Award was one for layover time in Winnipeg on May 1, 1971, and the claim was based on the provisions of Article 4.21 of the collective agreement. It was the Company's position that that article did not apply, but it was determined in the Award that it did apply, and the grievance was allowed.

As to the amount to which the grievors were entitled in respect of May 1, it is the Brotherhood's contention that they are entitled to compensation for the number of hours held at Winnipeg from release time to reporting time on that day. The Company, on the other hand, contends that they would only be entitled to eight hours' pay, pursuant to Article 4.6 of the collective agreement. That article is as follows:

"4.6 Assigned employees held out of service at a point en route shall be credited with 8 hours for each 24-hour period or the actual time of up to 8 hours for less than

a 24-hour period."

It was said, quite properly, that Articles 4.6 and 4.21 ought not to be interpreted so as to conflict with each other. Article 4 contains detailed provisions for the crediting of hours of service. In some cases, employees are entitled to credit even though no service is required, and the circumstances referred to in Article 4.6 are an example of this. The article also provides for the deduction of time for rest periods, for employees actually on a run, and who, without such deduction, would be entitled to continuous payment. As was said in the Award, the deduction of rest periods has nothing to do with whether employees in fact rest, but is simply a matter 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, that is, from "elapsed time en route" as defined in Article 1.1 (p). The Award held, in effect, that the grievors were required to remain in service on their assignments beyond the hours or days shown in the O.R.S. Reference was made to the example set out in Article 4.21, showing that rest is not deductible in cases where employees are still in service on days when they would otherwise expect not to be, and the conclusion reached was that the instant case was such a case.

Since it was held that Article 4.21 applied, it follows, in my view, that Article 4.6 cannot apply. Winnipeg could aptly be said to have been "a point en route" for the grievors when their train returned there in the course of its run to Vancouver, even though the same city had been the distant terminal of the run to begin with. The difficulty is with the notion that they were "held out of service" at that point, in the particular circumstances of this case. If they were, there would be no question of deduction of rest from such periods. In determining that Article 4.21 applied, and that, pursuant to its provisions, rest could not be deducted in respect of that day, the Award must be taken to have excluded any application of Article 4.6. Clearly, under Article 4.21, where an employee is en route beyond the hours shown in the O.R.S., and on days when he would otherwise expect not to be in service, no rest is deductible. As was said in the Award, it would be no solace to them to be told they were "out of service" for the time in question for their being in that location at all was the direct result of the delay.

Accordingly, it is my award that the grievors be paid from arrival time to reporting time in Winnipeg on May 1, 1971.

J. F. W. WEATHERILL
ARBITRATOR