CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 452

Heard at Montreal, Tuesday, June llth, 1974

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim for payment of continuous time due to a snow storm.

JOINT STATEMENT OF ISSUE:

Conductor L. Morin and crew, on February lst, 1974, were in regular passenger train service. Due to a severe snow storm the train did not reach its destination (Schefferville) as the unit went dead at Mileage 287.5.

The Union objected to the changes made on ticket and requested original ticket be paid. The Railway denied the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. H. BOURCIER	(SGD.) F. LeBLANC
GENERAL CHAIRMAN	SUPERVISOR - LABOUR RELATIONS

There appeared on behalf of the Company:

J.	Bazin	- Counsel
F.	LeBlanc	- Supervisor, Labour Relations, Q.N.S.&N.Rly. - Sept-Iles
R. P.	Morris	- Trainmaster, Q.N.S.&L.Rly. - Sept-lles
N.	West	- Trainmaster, Q.N.S.&L.Rly. - Sept-Iles
T.	Leger	- Assistant Labour Relations - Sept-lles
C.	Nobert	- Assistant Labour Relations - Sept-Iles

And on behalf of the Brotherhood:

J. H. Bourcier - General Chairman, U.T.U.(T) - Sept-Iles

AWARD OF THE ARBITRATOR

Conductor Morin and crew went on duty on February 1, 1974 at 0700, at Sept-Iles. After initial terminal delay of 1 hour and 20 minutes (chargeable in the usual way on their time return), they departed with Express Extra 245 for Shefferville. At mile 292 the train had

to reverse movement because of a severe snow storm, and at mile 288, at approximately 2055 on February 1, the engine failed. At approximately 1000 on February 2, the passengers were evacuated to camps at Esker, mile 285.9, this move being completed at about 1500 on that day.

The line was reopened on February 3, and the train moved off again at 2330 on that day, arriving at Shefferville at 11:10 on February 4. After final terminal delay of 50 minutes, the crew went off duty at 1200 on February 4. The claim submitted was for 76 hours and 40 minutes, inclusive of the initial and final terminal delays referred, and running time of 74 hours and 30 minutes. This claim for running time is, essentially, a claim for payment for total elapsed time between departure and arrival.

The company disallowed the claim submitted, and paid the crew on the basis of two revised tickets, one, in effect, for departure, and one for arrival. The first ticket included initial terminal delay, and running time of 29 hours and 30 minutes, intended to include, it would seem, the elapsed time between departure from Sept-Iles at 0820 on February 1 and the completion of the evacuation of passengers to the camps as Esker at 1500 on February 2. That time should certainly all be considered as running time for the purposes of payment. The second ticket included final terminal delay, and running time of 11 hours and 40 minutes, as the elapsed time between departure from Esker at 2330 on February 3 and arrival in Shefferville at 1110 on February 4. Again, there is no doubt that all that time should be counted for purposes of payment.

Nothing was allowed in respect of the time during which the grievors remained at Esker, from 1500 on February 2 until 2330 on February 3. It was argued that in fact the crew were occupied with the passengers who included a number of young people, but in my view the claim must be justified, if at all, on the basis of general provisions for payment and not on the particular circumstances, agreeable or disagreeable, that may have attended the interruption of their trip.

Article 2.01 of the collective agreement provides as follows:

> 2.01 In all classes of service, time will commence at the time required to report for duty and shall continue until the time released from duty.

Perhaps one way of stating the issue in this matter would be as follows: was it proper for the company to consider the grievor as being "released from duty" between 1500 on February 2 and 2330 on February 3? In my view it could not properly be said that the crew was "released from duty", within the meaning of the collective agreement, throughout the whole of the period in question. This is not to say that they were "on duty" throughout that period, for trainmen are not necessarily "on duty" throughout the entire course of a long trip. For instance "time off duty for rest", to which they may be entitled, refers to a period of interruption of a continuing tour of duty, and not to the final completion of such tour of duty in the sense of article 2.01. It may be more accurate to say, at least, that the grievors remained "in service" during the period in question, although they might not be considered as "on duty" all of

that time.

There appears to be no provision in the collective agreement dealing with the situation where employees must remain in service beyond what might be expected. The only case of which I am aware which involved a somewhat analogous situation is Case No. 327, although the circumstances were different, and quite different collective agreement provisions applied. The collective agreement in the instant case does provide for overtime, and would appear, from article 4.01, that overtime would be payable in this case. The collective agreement also provides for booking rest, in article 16, and such rest period is to be deducted in computing overtime. While the provisions of article 16 contemplate a determination by the trainmen themselves as to whether rest is required, it would be my view that, in circumstances such as those of the instant case, it would not be open to them to contend that there was no rest taken throughout the period in question.

Having regard to the foregoing, and to the circumstances of the instant case, it is my conclusion that the grievors were in service for the entire period from the beginning of their trip on February 1 until its completion on February 4. The effect of article 2 and article 4 is that they would be entitled to payment, and it would seem to overtime, in respect of the total elapsed time, but it is my view that in calculating the total time for that period, appropriate rest is to be deducted. This matter was not the subject of representations at the hearing of this matter, and I therefore make no final determination as to the precise amount payable. If the parties are unable to agree in that respect, jurisdiction is reserved to complete this award.

In accordance with and subject to the foregoing, the grievance is allowed.

Arbitrator