CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 477

Heard at Montreal, Tuesday, October 8th,1974

Concerning

CANADIAN PAClFIC LIMlTED (CP RAlL)
(Passenger Services)

and

UNlTED TRANSPORTATION UNION (T)

EXPARTE

DISPUTE:

Concerning the interpretation and application of Articles 3 and 7 and the provisions of Article 20, Appendix "A", Clause 4 (a) of the Collective Agreement.

EMPLOYEES'STATEMENT OF ISSUE:

Passenger service in transcontinental service was cancelled July 26 to September 2, 1973 account of a work stoppage by the Associated Non-Operating Unions. Dining Car Service employees were out of service during this period except for operating off and on in the Montreal - St.John service Account of being out of service a month or more the Company reduced the number of days due the employees in 1974.

The Union contend the men were not laid off and therefor have no reductions in their vacations.

Further the Company have failed to answer a request to the Company to join the Union in a Joint Statement of lssue to be heard before the Arbitrator at the Canadian Railway Office of Arbitration within the 60 day time limits as set out in the Collective Agreement.

FOR THE EMPLOYEES:

(SGD) J. R. BROWNE
GENERAL CHAlRMAN

There appeared on behalf of the Company:

F. G.	Wise	Manager, Passenger Operations, CP Rail, Montreal
W.	Orloff	Travelling Chef, Passenger Services, CP Rail, Winnipeg
T.	O'Grady	Inspector, Passenger Services, CP Rail, Montreal
J.	Ramage	Special Representative, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood.

J. R. Browne — General Chairman, U.T.U.(T) - Coquitlam, B.C.
A. Butler — General Chairman, Sleeping Car Condrs., U.T.U.(T) Chateauguay

AWARD OF THE ARBITRATOR

The issue in this case is whether, in calculating the vacation entitlements of employees, the Company should consider those employees whose assignments were cancelled because of the strike of employees in other bargaining units as having been "available for duty" during the time when the assignments were cancelled. Vacation entitlements depend on the number of days of each employee's "cumulative compensated service or available for duty". The employees in question were not compensated in respect of the period referred to. The question is whether, for vacation purposes, they should be considered as having been "available for duty".

Article 20 of Appendix "A" deals with certain Job security matters, including the payment of benefits to employees who are laid off. It would seem that, in general, employees whose assignments are cancelled and who are not permitted to exercise their seniority, would be regarded as laid off''. Clause 4 (a) of Article 20, however, is as follows:

> "4. Notwithstanding anything to the contrary in this Appendix, an employee shall not be regarded as laid off
>
> (a) during any day or period in which his employment is interrupted by leave of absence for any reason, sickness, injury, disciplinary action (including time held out of service pending investigation) failure to exercise seniority (except as otherwise expressly provided for in Clause 3 (b) of this Appendix "A"), retirement, Act of God, including but not limited to fire, flood tempest or earthquake or a reduction or cessation of work due to strikes by employees of the railway."

ln the instant case the time in question constituted a period in which employment was interrupted by a reduction or cessation of work due to strikes by employees of the railway. The employees in question, then, were not to be regarded as "laid off" for the purposes of Appendix "A". The clause referred to, however, does not deal with the question in issue here, that is, the status of the employees in question as "available for duty" or not.

Article 3 (e) of the collective agreement is as follows.

> "(e) When a regular assignment has been temporarily discontinued due to train mishaps, strikes, or Acts of God, such as storms, hurricanes, earthquakes, floods, slides, etc., employees affected, when at their home stations, are not to be considered as 'held-for-service' but will be privileged to operate on the spare board. When regular assignments are

> restored, the displaced men will return to duty on a first-in, first-out basis."

lt may be doubted whether even this provision applied in the circumstances described, where what occurred was an indefinite cancellation of all assignments. Certain employees were, it seems "recalled" in order of seniority to perform certain work, but the question whether that was the correct procedure or not need not be determined here. Certainly where employees are laid off they are not "held for service" in any sense. They have recall rights, and their failure to respond to a recall may have certain consequences, but the time when they are laid off is not time when they are "available for duty" in the sense in which that phrase is used in the vacation provision, even though they might in fact make themselves available if the opportunity arose. On the other hand, if Article 3(e) applied in their case, it is clear from that provision that the employees in question would not be oonsidered as "held for service".

"Availability for duty" is not necessarily the same thing as being "held for service", and I do not equate the two, but the phrase does have a technical mean under the collective agreement. lt would include layover or rest days, on which an employee may be subject to call, and these are counted together with the days actually worked for the purpose of calculating vacation entitlement. "Availability for duty", as it is here use contemplates the carrying on of work for which the employee may be called in with respect to which he may have some rights. Here, work had ceased, and, while the employees themselves may have had no other arrangements, they were not "available for duty" in the sense of the agreement.

There was, therefore, no violation of the collective agreement. The grievance in this case is a Union grievance relating to the interpretation of the agreement, and while, if successful, it may have lead to payments being made to employees, this is not a "wages ticket" claim to which Article 7 would apply.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR