CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 508

Heard at Montreal, Tuesday, June lOth, 1975

Concerning

CANADlAN NATlONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAlNTENANCE OF WAY EMPLOYEES

DISPUTE.

The Union claims the Company violated Rules 13.2 of Wage Agreement No. 10.3 when Machine Operator E. Brown was not paid travel time from Hillsport to Toronto on September 12th and l3th, 1974. The claim is for 20 hours.

JOlNT STATEMENT OF ISSUE.

Mr. Brown was on leave of absence account injury during the months of July and August 1974. He returned to work as a Helper in the Danforth Shop, Toronto on Tuesday, September 12, 1974. As a Machine Operator he was qualified to operate hydro tools and track liners. As the Junior qualified operator not working as such, he was required to exercise his seniority to operate the hydro tool at Hillsport and assumed such duties on September 12, 1974 and returned to Toronto. He claimed 20 hours' travel time returning to Toronto.

FOR THE EMPLOYEE..	FOR THE COMPANY
(SGD.) P. A LEGROS	(SGD.) S. T. COOKE
SYSTEM FEDERATlON GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company.

W. H. Barton	System Labour Relations Officer, C.N.R., Montreal
A. D. Andrew	System Labour Relations Officer, C.N.R., Montreal
W. W. Wilson	Labour Relations Assistant, C.N.R., Toronto

And on behalf of the Brotherhood:

P. A. Legros	System Federation General Chairman, B.M.W.E., Ottawa
G. D. Robertson	Vice President, B.M.W.E., Ottawa
L. Boland	General Chairman, B.M.W.E., London

AWARD OF THE ARBlTRATOR

The claim in this case, it will be noted, is for the time of the grievor's return trip from Hillsport to Toronto, on September 12 and 13, 1974. lt seems that his claim to be paid for time spent in travel to Hillsport was paid, although it was the Company's contention that it was not obliged to make such payment under the terms of the collective agreement. ln this case, I do not draw any conclusion from the fact that the earlier claim was paid: the question here is simply whether the grievor was entitled to payment in respect of the return trip.

Article 13.2 of the collective agreement is as follows:

"13.2 by rail or public transportation from one work location to another on any calendar day, shall be paid for all time travelling between the hours of 6 a.m. to 10 p.m. at the straight time rate provided sleeping accommodation is available; if sleeping accommodation is not available they shall be paid for all time occupied in travelling at the straight time rate.''

ln this case it seems that the grievor would properly be said to be travelling from one work location to another, and since it does not appear that sleeping accommodation was available, the grievor would be entitled to be paid for all time occupied in travelling at the straight time rate. There is no dispute over the number of hours involved.

The Company, however, relies on Article 13.1 of the collective agreement, which provides as follows.

"13.1 Employees travelling from one location to another account the exercise of seniority, including moving to or from the laid-off list, shall not be entitled to travel time.''

The issue, then, is whether the grievor travelled from Hillsport to Toronto "account the exercise of seniority" within the meaning of Article 13.1. In deciding this question, it is to be observed that the grievor went to work at Hillsport because he was "required" to exercise his seniority to fill what appears to have been a temporary assignment there. His regular work as far as it appears from the material before me, was as a Helper, in the Danforth Shop, Toronto. He was, however, qualifIed in the higher classification of Operator, and it was in that capacity that he was required to exercise seniority and fill the assignment. He did not "exercise seniority" in the sense that he bid successfully for some bulletined Job, that he displaced some other employee, or that he was otherwise subject to lay off.

Similar considerations apply, in my view, with respect to his return to Toronto. The assignment for which the grievor had been required had ended. He might, it is said, have displaced junior Operators, in the exercise of seniority. Instead, he simply returned to what appears to have been his regular assignment as Helper, at Toronto.

While his entitlement to this assignment would depend, in a sense, on his seniority rights, or might be said to reflect these in some way, his return to Toronto does not, in my view, amount to the "exercise of seniority" as the phrase is used in Article 13.1. There, it seems to me, the phrase is used to limit the Company's general obligation, set out in Article 13.2 with respect to the transportaticn of employees from one work location to another. Thus, where a movement of personnel is forced on the Company because of an employee's assertion of seniority, the necessary travel time is not paid by the Company. ln the instant case, it appears that the temporary assignment of the grievor was one required by the Company, so that the limitation contained in Article 13.1 would not apply.

For the above reasons, it is my conclusion that the grievor was entitled to payment pursuant to Article 13.2. I make no finding, however, with respect to the suggestion that the grievor was "ordered" to return to Toronto. My conclusion in this case is reached having regard to the circumstances of the particular case, as they appear from the material before me. The grievance is accordingly allowed.

J. F. W. WEATHERHILL
ARBITRATOR