CANADlAN RAILWAY OFFlCE OF ARBITRATION

CASE NO. 555

Heard at Montreal, Tuesday, June 8th, 1976

Concerning

CANADlAN PAClFlC LIMITED (CP RAlL)

and

BROTHERHOOD OF RAlLWAY, AlRLlNE AND STEAMSHIP CLERKS, FRElGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of Messrs. J.T. MacDonald, P.J. Colletti, W.D. Harrison and M. Benhayon of the Eastern Region Data Centre for payment at a rate of time and one-half for time spent travelling on Company business on October 26, 1975, an assigned rest day.

JOINT STATEMENT OF lSSUE:

Above-mentioned employees were ordered to report to various locations in the Province of Ontario to take inventory of operating stock and stores stock, this work to commence on October 27, 1975. The employees travelled to their designated assignments on their rest day October 26, 1975 and claimed payment at time and one-half under provisions of Article 11.5 of the Collective Agreement.

The Company denied payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) W. T. SWAlN	(SGD.) J. A. SABOURIN
GENERAL CHAlRMAN	ASSISTANT DIRECTOR OF ACCOUNTING

There appeared on behalf of the Company:

D. Cardi	Labour Relations Officer, CP Rail, Montreal
R. A. Marks	Asst. Manager Disbursement Accounting, CP Rail, Montreal
G. M. Booth	Personnel Officer, Finance & Accounting, CP Rall, Montreal

And on behalf of the Brotherhood:

W. T. Swain - General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

Article 11 of the collective agreement deals generally with the matter of assigned rest days. In the instant case, the claim is made under Article 11.5. Article 11.3, which is referred to therein, is

not material to this case. Article 11.5 is as follows:

> "11.5 Employees, if required to work on regularly assigned rest days except when these are being accumulated under Clause 11.3, shall be paid at the rate of time and one-half on the actual minute basis with a minimum of two hours and forty minutes for which two hours and forty minutes' service may be required."

In this case the grievors were required to travel on Sunday, October 26, 1975, which was a rest day for each of them. The travel time varied with each grievor's destination, but was from slightly less than four hours to slightly less than eight hours. The question is whether, in the circumstances, they were "required to work" within the meaning of Article 11.

An employee may be "at work" even when he is not carrying out tasks relating to his own classification. If, during the course of his normal working hours, he is required to move from one work site to another, it would not normally be doubted that he continues to be at work, and that he continues to be entitled to his regular pay. Questions have arisen in some cases as to whether an employee may be said to be "at work" and entitled to payment when he complies with his employer's request to do something (other than the tasks of his classification) outside of normal working hours. Thus in Case No.122 an employee taking a test of driving ability was held to be entitled to payment of wages for the time involved. In Cases Nos. 310, 311 and 385, it was held that employees taking medical examinations required by the Company were entitled to be paid. In Case No. 220, however, it was held that an employee required to report for a disciplinary investigation was not entitled to such payment.

Here, the grievor's time on a rest day was devoted to travel to a distant work site for the purpose of carrying out the Company's work. It does not appear that the grievors chose to travel then, rather than on a regular work day; they travelled at the request of the employer and on a matter relating to their work. Thus, being on the Company's business and acting pursuant to the Company's instructions, it may be thought that the grievors should be considered as having been "required to work" on their rest day.

It is the Company's position that the matter is governed, not by Article 11, but by Article 30, which deals expressly with the matter of "travelling away from headquarters". That article is as follows:

> "30.1 Employees assigned to duties which require travelling away from their headquarters shall, while so assigned, be paid for their regularly assigned hours at headquarters and, in addition, for all time worked on proper authority outside the limits of such regularly assigned hours. They shall be paid actual necessary expenses, including sleeping car accommodation.
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> 30.2 Stores employees sent out on the road to work temporarily shall be allowed pro rata rates while travelling and actual reasonable expenses they necessarily incur."

Article 11.5, as has been noted, appears in the framework of an article which deals generally with the matter of rest days. The real thrust of the article is its provision for the rate, and the minimum amount, which is to be paid in respect of such work. In my view, were it not for the express provisions of Article 30, the language of Article 11.5 appears broad enough to include a situation such as that in the instant case. However, Article 30 deals expressly and particularly with the situation here, that is "travelling away from headquarters". These particular provisions, which deal precisely with the subject-matter, must therefore prevail over the general provisions of the other article which would cover this case only incidentally. ln only one case, dealt with in Article 30.2, is there provision for payment while actually travelling. The grievors do not come within the scope of this provision. The inference to be drawn is that the parties did not intend to provide for payment of travel time in cases such as the present.

It is my conclusion that the present case must be determined under Article 30 rather than Article 11, and that the grievance cannot succeed under the terms of this particular collective agreement. Accordingly the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR