CANADIAN RAlLWAY OFFICE OF ARBITRATlON

CASE NO. 561

Heard at Montreal, Tuesday, September 14, 1976

Concerning

CANADIAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DlSPUTE:

Claim on behalf of Extra Gang Foreman C. Belanger and others, for living expenses while working at Moncton, N.B. October/ November 1975.

JOlNT STATEMENT OF ISSUE:

Mr. Belanger and eight other employees were members of an extra gang assigned to the Company's Chaleur Area. They were accommodated in a regular boarding car outfit.

ln October 1975, they were transferred temporarily to the Maritime Area, which adjoins their assigned territory. While working on the Maritime Area during October and November, they continued to be accommodated in their regular boarding car outfit.

Mr. Belanger and the eight other employees submitted claims for boarding expenses in respect of the time they worked on the Maritime Area. The Company declined to pay the claims, and the Brotherhood is contending that the Company is in violation of Article 21.8 of l.age Agreement No. 17.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. A. LEGROS	(SGD.) S. T. COOKE
System Federation	Assistant Vice-President
General Chairman	Labour Relations

There appeared on behalf of the Company:

A. D. Andrew	System Labour Relations Officer, C.N.R., Montreal
L. E. Trynor	Regional Engineer Technical Services, CNR, Moncton, N.B.
H. B. Munro	Track Construction Supervisor, C.N.R., Campbellton, N.B.
J. D. Bennett	Technical Services Engineer, C.N.R., Campbellton, N.B.
N. B. Price	Labour Relations Assistant, C.N.R., Moncton, N.B.

And on behalf of the Brotherhood:

P. A. Legros	System Federation General Chairman, B.M.W.E.,

Ottawa
L. Roy — General Chairman, B.M.W.E., Riviere du Loup, Que.

AWARD OF THE ARBITRATOR

Article 21.8 of the collective agreement provides as follows:

> "21.8 Employees taken off their assigned territory or regular boarding outfits, to work temporarily on snow or tie trains, or other work, shall be compensated for boarding and lodging expenses they necessarily incur. This shall also apply under similar conditions to pump repairers when taken away from their headquarters and to pumpmen when away from their regularly assigned territory."

The essential facts of the case are contained in the Joint Statement set out above. Certain other details relating to the grievors' assignment and working conditions, which were referred to at the hearing, are not relevant to the determination of the issue, which is simply one of the applicability of Article 21.8 in the case of employees who were taken off their own territory but continued to be accommodated in their regular boarding car outfit.

The Union's claim is, essentially, that since the grievors were "taken off their assigned territory" they were therefore entitled to the benefit of Article 21.8, and to be compensated for board and lodging expenses. lt is the Company's position, based on its analysis of Article 21.8 read as a whole, that since the grievors were not taken off their regular boarding outfits, they were not entitled to the benefit of the article.

ln my view, Article 21.8 must be read as a whole. While the wording of the first sentence of the article may well give rise to debate, it is my view that the word "or" in the opening clause is not used disjunctively, but rather serves to qualify the reference to "assigned territory" by the immediate following reference to "regular boarding outfits". The purpose of the provision is to ensure that employees are compensated for board and lodging expenses when off their assigned territory, without their regular boarding outfits.

ln Canadian Railway Board of AdJustment No.1 Case No.581, the Company argued that the intent of the clause was that the words "assigned territory" referred only to employees who were not assigned to boarding outfits. This argument appears to have prevailed in that case, as it did later in Canadian Railway Office of Arbitration Case No.81, where the article now in question was held to apply only where boarding outfits were not supplied.

The article in question has been in the same form since it was negotiated in 1920. It has been the subject of at least two binding determinations. While, as I have noted, its wording may give rise to debate, it is my view that, read as whole, the article deals with the situation where boarding outfits are not provided. That conclusion having been reached in two previous cases and the article not having been changed, it is my view that it should prevail in the instant case. Thus, on my own reading of Article 28.1, and also having

regard to the previous cases, I conclude that it does not apply in the instant case. The grievance is accordingly dismissed.

J.F.W. WEATHERILL
ARBITRATOR