CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 599

Heard at Montreal, Tuesday, March 8, 1977

Concerning

CANADlAN PAClFIC TRANSPORT COMPANY LlMITED
(CP TRANSPORT - WESTERN DlV.)

and

BROTHERHOOD OF RAlLWAY, AlRLINE AND STEAMSHlP CLERKS, FRElGHT HANDLERS, EXPRESS AND STATlON EMPLOYEES

EXPARTE

DISPUTE:

Claim of eight hours at pro rata rate for each layover at Vancouver and Revelstoke.

EMPLOYEE'S STATEMENT OF ISSUE:

D. E. Seager, regular scheduled driver - Calgary to Cairnsite and return, was dispatched Calgary to Kelowna.

Upon taking rest, Mr. Seager was dispatched to Vancouver.

Subsequent to taking rest at Vancouver, Mr. Seager was dispatched to Revelstoke and upon completion of rest continued to Calgary.

The Union contend that Article 30.19 of the Agreement was violated in that being dispatched via Vancouver is not the shortest route back to his home terminal, and further that Article 30.15 (a) was violated when Mr. Seager was dispatched with two additional layovers after taking rest.

The Union requested that Mr. Seager be reimbursed eight hours' pay at pro rata rate for each subsequent layover.

The Company refused payaent.

FOR THE EMPLOYEE:

(Sgd.) R. Welch
System General Chairman

There appeared on behalf of the Company:

C. C. Baker — Director, Labour Relations & Personnel, CP Transport, Van.

And on behalf of the Brotherhood:

R. Welch System General Chairman, B.R.A.C., Vancouver
R. C. Smith National Vice President, B.R.A.C., Montreal

AWARD OF THE ARBlTRATOR

lt is acknowledged that the Company was in violation of the collective agreement in dispatching the grievor with two additional layovers after taking rest. This was a violation of Article 30.15(a), which is as follows:

> "30.15 (a) The destination point for drivers shall be designated upon original dispatch. The initial destination point may be changed by the Company prior to rest being taken."

The Company contends that the grievor is not entitled to payment regardless of the violation, since compensation for layover is governed by Article 30.7. As well, it is said, the Company did pay compensation to another employee who was adversely affected by reason of the improper dispatching. On this latter point, while compensation may have been payable to one employee who lost work through the Company's error, that would not affect any entitlement which the grievor, who was also affected by it, would have to compensation.

Article 30.7 is as follows:

> "30.7 When a mileage-rated driver is required or requested by the Company to lay-over away from his home terminal for a period of time of more than fourteen (14) hours, the driver shall be compensated for such lay-over for each and every hour over fourteen (14) hours with a maximum of eight (8) hours in every twenty-two (22) hour period."

ln my view, this provision is addressed to those cases where a driver is properly required or requested to layover away from his home terminal. Where the article applies, its effect is to ensure that, within limits, employees receive compensation in respect of extended layovers. They are not entitled to compensation for a period of rest at the end of a trip, except as provided in the article. Here, the grievor, having been properly dispatched through to Kelowna, would not have been entitled to payment there except under Article 30.7, and would have been entitled to the first available trip "directly back to his home terminal over the shortest route or his regularly assigned route", pursuant to Article 30.19. Instead, he was improperly dispatched on to Vancouver. In these circumstances, it is my view that Article 30.7 does not apply to the subsequent rests improperly treated as such, and that the appropriate form of compensation is, as the Union proposes.

lt is accordingly my award that the grievor be paid sixteen hours at the terminal delay rate.

J.F.W. WEATHERILL
ARBITRATOR