CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 625

Heard at Montreal, Tuesday, September 13th,1977

Concerning

CANADIAN NATlONAL RAlLWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of Car Control Clerk L.J. Spiterie, Toronto, for pay while attending an investigation.

JOINT STATEMFNT OF lSSUE:

On February 27, 1976, Mr. Spiterie reported for an investigation pursuant to Article 24 of Collective Agreement 5.1, at 1400 hours, the starting time of his regular assignment. This particular investigation consumed more than eight hours' time.

The Brotherhood contends that, under Article 4.5 of Agreement 5 Mr. Spiterie is entitled to eight hours' pay at his regular rate for that day.

The Company contends Article 4.5 is inapplicable in this case, and that the collective agreement does not in such a case confer entitlement to pay while attending an investigation.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) J.A. Pelletier National Vice-President	(Sgd.) S.T. Cooke Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

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

And on behalf of the Brotherhood:

J. D. Hunter	Regional Vice President, C.B.R.T., Toronto

AWARD OF THE ARBlTRATOR

Article 4.5 of the collective agreement is as follows:

> "Regularly assigned employees who report for duty on their regular assignments shall be paid eight hours at their regular rate. Employees who are permitted to leave work at their own request shall be paid at the hourly rate for actual time worked, except as may be otherwise arranged locally."

From the agreed statement of facts it is clear that the grievor was present on Company premises during the hours of his regular assignment, and indeed for a somewhat longer period, for the purpose of attending at an investigation. It was open to the Company to hold the grievor out of service pending investigation, pursuant to Article 24.2. That article, as I have indicated in other cases with respect to similar provisions, does not necessarily conflict with Article 4.5. An employee cannot be, at the same time, both in and out of service. Being "in service" is not identical in all respects with being "at work" or "on duty".

While the Company may (subject to the requirement of Justification) have held the grievor out of service for a time, and pending its investigation it is nevertheless the case (in my view of the matter) that when the grievor was summoned to report for investigation (even in the face of his own apparent lack of cooperation), he was "in service" during at least those regular hours when he was in attendance and subject to the Company's direction. The grievor was required to attend on February 27, 1976, during what were the hours of his regular assignment, and if the Company preferred to conduct his investigation at that time, that was a use of his time on duty which it was entitled to make, but which would not prejudice the grievor's right to be paid. Whether or not he would be entitled to any other payment than that required by article 4.5 is quite a different matter, but that is not a question which arises in this case.

The grievor reported for duty (that is, he reported for the purpose the Company required) during the hours of his regular assignment. ln my view, this is what is contemplated by article 4.5. Accordingly, the grievor is entitled to payment pursuant to that article.

The grievance is therefore allowed.

J.F.W. WEATHERILL
ARBITRATOR