CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 809

Heard at Montreal, Tuesday, February 10, 1981

Concerning

BRITISH COLUMBIA RAILWAY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Claim for R.D. Duffin payment for eating enroute.

EMPLOYEES' STATEMENT OF ISSUE:

On April 2, 1980, R.D. Duffin claimed payment for eating enroute.

Company declined payment stating there is no provision in our collective agreement for payment for eating enroute.

Union contends that both Article 117 and Article 201(7) states very clearly payment for eating enroute. For this reason, the Union requests that R.D. Duffin be paid for time claimed while eating enroute.

The Company has declined the Union's request.

FOR THE EMPLOYEES:

(SGD.) K.A. LINDLEY
GENERAL CHAIRMAN

There appeared on behalf of the Company:

P.A. MacDonald -- Vice-President, Labour Relations, B.C. Railway, Vancouver
Hugh Collins -- Supervisor, Labour Relations, B.C. Railway, Vancouver
B.M. McIntosh -- Labour Relations, B.C. Railway, Vancouver

And on behalf of the Brotherhood:

J.H. Sandie -- Vice-President, UTU, Sault Ste. Marie, Ont.
K.A. Lindley -- General Chairman, UTU, Surrey, B.C.

AWARD OF THE ARBITRATOR

This grievance involves a time claim submitted on April 2, 1980 by Conductor Duffin in respect of himself and his two brakemen. The claim was for twelve hours' pay. On the day in question Conductor Duffin and crew were on Train No. 24, running between Williams Lake and Lillooet, a distance of one hundred and fifty-four miles. The crew was on duty from 1000 until 2200 hours. On one hour's notice to the Dispatcher (pursuant to Article 117 of the collective agreement), the crew took twenty-five minutes (after seven hours and thirty-five minutes on duty) to eat. Their meal was taken at Koster, where it seems a stop was necessary to pick up power for the train. While twelve hours elapsed between the time the grievors reported for duty until the time the grievors were released from duty, the Company paid them only in respect of eleven hours and thirty-five minutes, reducing their claim by the amount of time they had taken to eat. The issue is whether or not the grievors were entitled to payment in respect of that time.

The basis of payment for "all services" (with exceptions not here material), is set out in Article 201 of the collective agreement. Pay is to be on "an hourly rate with time and one-half after 100 hours per checking period for time on duty . . ." (Article 201(1)). The points for coming on or going off duty are defined in Article 201(6). Article 201(7) is as follows:

"Road Time

> Trainman will appear on duty at the time ordered for and will sign register book. He will be paid the hourly rate on the minute basis from the time ordered to report for duty until released from duty at either his objective or initial terminal, except should the trip be interrupted on account of illness, rest. etc."

At the hearing in this matter, the Union relied particularly on the second sentence of Article 201(7), the sentence reading: "He will be paid the hourly rate . . . except should the trip be interrupted on account of illness, rest.". When that sentence is read in the context of Article 201(7) as a whole, and especially having regard to the concluding words of the Article: ". . . on account of illness, rest. etc.", and bearing in mind that "etc." is written with a small "e", it might well be thought that the Article as printed reveals a typographical error. On the material before me, however, I think that cannot be said to be the case, although I think it is true that the Article's present form is attributable to a typographical error. The apparent anomaly of the period between "rest" and "etc." at the end of the Article was known to the parties before they executed the collective agreement. Even if I had jurisdiction to rectify this possible "error" in the agreement (and I do not believe I do), I would not do so, because it appears that the present form of the agreement is deliberate.

The Union contends that the second sentence of Article 201(7), ending with the phrase "on account of illness, rest." is complete, and that by virtue of that sentence illness and rest are the only reasons for the interruption of a trip which would interrupt payment on the minute basis for time between reporting for duty and release from

duty. While there is no doubt that the second sentence of Article 201(7) is a grammatically complete sentence as it stands, its meaning is to be determined in the contex of the Article - and indeed the whole collective agreement - in which it appears. It must be remembered as well that the third "sentence" of Article 20?;7) - the expression "etc." - is also a gesture which the parties accepted as a part of the collective agreement, and which must be given its appropriate significance, again in the context of the Article in which it appears.

In my view the significance of "etc." at the conclusion of Article 201(7) is to extend the possible cases in which a trip may be interrupted and where pay should be interrupted as well. Clearly, however, this extension of possibilities is not open-ended. Those other situations where a trip is interrupted and where, as a result, pay is interrupted as well must be situations which are ejusdem generis, that is, of the same logical order as the ones explicitly mentioned. While "illness" is, I think, self- explanatory (and would not include brief moments of "not feeling too well" and the like), "rest", it should be made clear, refers not to a period of taking it easy but rather to rest claimed or booked in accordance with the provisions of the collective agreement. Either of these events, the occurrence of illness or the booking of rest, would involve a definite and relatively prolonged interruption in a trip. One can imagine other events which would have such an effect: a derailment or some other accident, a strike, in some circumstances or perhaps some other occurrence which could properly be said to be of the same logical order as "illness" or "rest".

Taking a relatively short break to eat a meal is not, in my view, the sort of interruption of a trip which would take employees off duty and interrupt their right to pay on the minute basis. The collective agreement does contemplate that employees will eat. It does not appear to deal expressly (in the Articles cited to me) with the matter of payment for time spent eating. In many instances it will be possible for employees, acting responsibly, to eat enroute. In some cases, as perhaps in this, it may be appropriate for the entire crew to take time to eat while a train is stopped. It does not necessarily follow that employees are somehow "off duty" in such circumstances, and that they are no longer entitled to pay.

In the circumstances of the instant case the grievors were, in my view, on duty at all times and were entitled to pay in respect of the entire twelve-hour period from the time they reported for duty until the time they were released from duty. This does not mean that employees may abuse their undoubted right to eat with impunity. Where employees delay a train unduly, they are subject to discipline (see C.R.0.A. case No. 775). In some circumstances, such conduct may amount to an unlawful strike, and would subject the employees to other penalties; and it might well be, as I have suggested, that in such cases the employees would not be entitled to pay. In the instant case, however, it has not been shown that the grievors' taking time to eat was of such a nature or done in such circumstances as to interrupt the trip within the meaning of Article 201(7). (Cp. Case No. 780.)

For the foregoing reasons it is my conclusion that the grievors were entitled to twelve hours' pay in respect of the day in question, and

it is my award that they be paid for the twenty-five minutes which was deducted from their claims. The grievance is accordingly allowed.

J.F.W. Weatherill
Arbitrator