

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 810

Heard at Montreal, Tuesday, February 10, 1981

Concerning

BRITISH COLUMBIA RAILWAY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

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Claims by Conductor H. Reimer tickets # 5507, 5508, 5509, 5510, 5512, 5513, 5514 and 5515 are for 8 hours' payment up on Passenger Train # 3 and 8 hours' payment for return trip on Passenger Train # 4.

EMPLOYEES' STATEMENT OF ISSUE:

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Conductor on Passenger Train # 3 from North Vancouver to Squamish and Passenger Train # 4 from Squamish to North Vancouver submitted claims for 8 hours' payment for each run.

The Company declined payment on the basis that Article 201(7) stipulates how a trainman will be paid.

The Union contends that the Company did not apply Article 127(a) properly. So therefore, the said tickets submitted by H. Reimer should be paid.

The Company has declined the Union's request.

FOR THE EMPLOYEES:

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(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

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Article 127(a) of the collective agreement is as follows:

"Assignments, other than work train, will be bulletined specifying the home terminal, initial and objective terminal for each trip, territory over which the assignment is to perform service, starting time and days of operation. So far as it is practicable, assignments will start at the bulletined starting time, except that an assignment may be started at a time later, but not earlier than that specified in the bulletin unless otherwise mutually agreed. When bulletined starting time is changed more than three (3) hours, the assignment will be rebulletined."

The assignment which the grievor worked was one which was bulletined on April 28, 1980, as one in passenger service on Train No.'s 3 and 4, with home terminal North Vancouver, initial terminal North Vancouver and objective terminal North Vancouver. It was in fact a "turnaround" assignment from North Vancouver to Squamish (as Train No. 3) and return (as Train No. 4). The substantial issue raised by the grievance is whether or not an assignment of this sort was proper. If it was not, then it would appear that the grievor's return trip from Squamish to North Vancouver constituted a separate day's work for which he would be entitled to separate payment.

In fact, the bulletin complied with the requirements of Article 127(a) in terms of the information it contained.

In certain instances which the Union has put forth as being analogous to this, the Company has bulletined as separate assignments the outbound and return operations of trains. Thus, Train No. 1 operates daily from Vancouver to Lillooet, returning as Train No. 2. It is not, in terms of crew assignment, bulletined as a turnaround assignment. The Union argues that the Company should be consistent, that the cases are identical except for the mileages involved, and that turnaround operations are not provided for.

There is no specific requirement that the Company always be "consistent" in the management of its operations, and there may well be circumstances where that is not desirable. As to the cases referred to being identical except for the mileages involved, that fact is that the differences in mileage are substantial and significant, and the assignments, as a result of the way they are made, reveal a "consistency" in terms of time on duty which would not exist if the Union's contention were to prevail.

More important than this, however, is the fact that the collective agreement does not prevent the Company from establishing turnaround assignments. In the preceding collective agreement Article 202 thereof dealt with certain aspects of payment to trainmen in short turnaround passenger service. The Company's ability to bulletin assignments in turnaround service was not created by that Article, which assumed such ability and went on to deal with the rates of pay applicable in such cases. In the current collective agreement the provisions relating to the basis of payment have been substantially changed. There appears to be no equivalent to the provision which

had been Article 202 of the old agreement. The Company's bulletining of an assignment in turnaround service, however, cannot be said to be an attempt to continue the former Article 202: the basis of payment is that established in the current agreement, and the right to establish a turnaround assignment (which right, as I have said, was not established, but was rather assumed under the old agreement), is neither greater nor less than it had been. In my view, and having regard to the provisions of the collective agreement to which I was referred, it was proper for the Company to make the assignment in question. As I have said, the assignment was properly bulletined.

In the instant case the grievor was paid in accordance with Article 201(7) of the collective agreement, that is "on the minute basis from the time ordered to report for duty" (at North Vancouver), "until released from duty at either his objective or initial terminal" (that is, on return to North Vancouver). The fact that the crew operated the train on its return journey as Train No. 4 does not mean that they were released from duty at Squamish. They were on duty throughout, and entitled to payment throughout. But they were not entitled to a day's payment for each leg of the trip.

There has been no violation of the collective agreement in these circumstances and the grievance is, therefore, dismissed.

J.F.W. Weatherill  
Arbitrator