CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 925

Heard at Montreal, Wednesday, March 10, 1982

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT
AND GENERAL WORKERS

DISPUTE:

Pay claim from Porter C. Carrington for two trips made during a service disruption.

JOINT STATEMENT OF ISSUE:

On May 25, 1981, Mr. Carrington, spare board employee, worked as Porter on trains 1-2, Winnipeg to Vancouver and return.

Due to a service disruption on the outward trip, Mr. Carrington was airlifted from Calgary and, as a result, arrived Vancouver approximately 12 hours ahead of the scheduled arrival time of the train. On the return trip, the train left Vancouver on time but arrived Winnipeg 24 hours late.

The grievor was compensated for the actual hours worked.

The Brotherhood contends that Mr. Carrington worked 9 hours and 30 minutes over and above the hours as shown on the O.R.S. for his assignment and should have been compensated accordingly.

The Corporation maintains that the grievor was properly compensated for the hours worked.

A grievance was initiated and the Corporation declined it at all steps of the grievance procedure.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) J. D. HUNTER	(SGD.) A. D. ANDREW
NATIONAL VICE-PRESIDENT	SYSTEM MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

A Leger	- Labour Relations Officer, VIA Rail, Montreal
W. Hallonquist	- On-Board Services Manager, VIA Rail West
P. Newsome	- Manager, Industrial Relations Planning, VIA Rail Montreal
C.O. White	- Labour Relations Assistant, VIA Rail Montreal

And on behalf of the Brotherhood:

A. Cerilli - Representative - CBRT&GW, Winnipeg

AWARD OF THE ARBITRATOR

The grievor was a spare employee rather than one having a regular assignment. Provisions for payment are quite different for the two classes of employee. Payment of a spare employee varies with the nature of the service he is called to perform.

In the instant case the grievor was called in his turn to replace a regularly assigned employee who was absent. This absence, in my view, created a "temporary vacancy" within the meaning of Article 1.1 (h) of the Collective Agreement. By Article 7.2 (i), it is contemplated that spare board employees may be required to protect "temporary vacancies in regularly assigned positions - - on a trip by trip basis". The grievor was properly called for such service in this case.

Article 7.12 of the Collective Agreement is as follows:

> "7.12 When filling a temporary vacancy in a regular assignment, spare employees shall be governed by conditions of the appropriate Operation of Run Statement and they shall revert to the bottom of the spare board on completion of the last trip."

Article 7 deals generally with the operation of the spare board. Article 4 deals with "Hours of Service and Overtime" or, more generally, with pay. Article 4.11 is as follows:

> "4.11 Spare employees will be governed by the O.R.S. of a run for the period they are required to relieve regularly assigned employees."

There was an Operation of Run Statement applicable to the trains in question. It provided, among other things, for "net hours of duty" for both the Eastbound and Westbound segments of the trip. It also provided for a number of days off between trips. It is clear that where a spare board employee replaces an assigned employee, he is governed by the Operation of Run Statement (O.R.S.) only for as long as his relief assignment continues, that is, in this case, until the completion of the return trip. Thus, the grievor in the instant case would again be assigned to the spare board, in his turn, upon arrival at Winnipeg. The O.R.S. would no longer apply to him, and in particular the days off would not affect him.

Generally speaking, spare employees are paid for total hours worked in each.pay period at pro rata rates. That is set out in Article 4.2 (e). Article 4.2 (f) provides for payment at time and one-half i'or hours worked in excess of 320 in each designated eight-week period. Those provisions no doubt apply in the instant case. The question is, however, what is to be counted as hours worked? In particular, is the grievor entitled to count the "net hours of duty" called for by the O.R.S., rather than actual hours worked? Here, the actual hours worked were less than those called for by the O.R.S., because

of the early arrival in Vancouver in the circumstances set out in the joint statement.

What occurred in this case is contemplated by Article 4.25, which is as follows:

> "4.25 Assigned employees who complete their round trip assignments but are rerouted due to an emergency or service disruption will be compensated for actual time worked (not less than O.R.S.), their guarantee will be protected and Articles4.22 and 4.23 will apply."

This provision sets out a form of guarantee of certain trip hours, in certain conditions. They are conditions which obtained in this case. While the grievor was not generally an "assigned employee", he was filling a temporary vacancy as such, and the 0.R.S. applied to him, as has been shown. In my view, the O.R.S. applied up until the completion of the assignment for which the grievor was called. That assignment, by virtue of the O.R.S. and Article 4.25, included a guarantee that not less than the net hours of duty shown in the O.R.S. would be credited where there was a rerouting due to a service disruption, as was the case here.

It is accordingly my conclusion that the grievor properly filed a claim for payment based on the 0.R.S. in respect of the westbound segment of his trip. This claim ought not to have been reduced in the circumstances, and the grievance is therefore allowed.

J. F. W. WEATHERILL,
ARBITRATOR.