CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1008

Heard at Montreal, Wednesday, November 10th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(PRAIRIE REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that the Company violated Sections 5.1, 8.6, 8.7, 9.1 and 11.2(c) of Wage Agreement No. 17 when it operated the Rail Change-Out (R.C.0.) Gang with Friday and Saturday rest days and paid employees travelling on the boarding and sleeping cars on Sunday, May 24, 1981, eight hours instead of all time spent travelling between 6:00 A.M. and 10:00 P.M.

Claim is for all employees on the R.C.0. Gang to be paid eight hours at regular pay for every Friday they were required to take as a rest day and overtime rates of pay on every Sunday they were required to work and received their regular rates of pay during the claim period (May 24, 1981 - July 22, 1981). The employees should be compensated an additional eight hours for travelling May 24, 1981.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company changed the rest days of the R.C.0. Gang from Saturday-Sunday to Friday-Saturday thereby violating Sections 5.1, 8.6, 8.7 and 9.1 of the Wage Agreement.

The Union further contends that on Sunday, May 24, 1981, all employees should be paid an additional eight hours as travelling time. Section 11.2(c).

The Union further contends that the affected employees should be paid eight hours at the straight time rate for Fridays and penalty overtime for all time worked on Sundays during the claim period.

The Company denies the Union's contention.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN System Federation General Chairman	(SGD.) R. J. SHEPP General Manager, Operation and Maintenance

There appeared on behalf of the Company:

R. D. Falzarano	- Asst. Supervisor, Labour Relations, CPR, Winnipeg
R. E. Petley	- Asst. Regional Engineer, CPR, Winnipeg
K. W. Sutherland	- Superintendent of Maintenance of Way, CPR, Montreal

I. J. Waddell - Labour Relations Officer, CPR, Montreal
And on behalf of the Brotherhood:
H. J. Thiessen - System Federation General Chairman, BMWE, Ottawa
R. Wyrostok - Federation General Chairman, BMWE, Edmonton
E. J. Smith - General Chairman, BMWE, London
L. DiMassimo - General Chairman, BMWE , Montreal
F. L. Stoppler - Vice-President, BMWE, Ottawa

AWARD OF THE ?RBITRATOR

This case involves two distinct claims. One relates to the scheduling of rest days and the other to payment of travel time.

As to the first claim, Article 5.1 of the Collective Agreement provides as follows:

"SECTION 5

Assignment of Rest Days

"5.1 The rest days shall be consecutive as far as is possible consistent with the establishment of regular relief assignments and the avoidance of working an employee on an assigned rest day. Preference shall be given to Saturday and Sunday and then to Sunday and Monday. In any dispute as to the necessity of departing from the pattern of two consecutive rest days or for granting rest days other than Saturday and Sunday or Sunday and Monday, it shall be incumbent on the Railway to show that such departure is necessary to meet operational requirements and that otherwise additional relief service or working an employee on an assigned rest day would be involved."

There was, in the instant case, a departure from the preferred schedule of rest days. It is, therefore, incumbent on the Company to show that such departure was necessary to meet operational requirements. It was the Union's position that it was not sufficient to show that such departure was at the request of the employees involved. That is quite correct. The Company did not, however, seek to justify the departure from the preferred schedule on that ground.

Operation of the Rail Change-Out machine requires the blocking of the sections of track involved for substantial periods of time. This can mean disruption of train schedules and of maintenance operations. From the material before me, it is clear that Friday is a somewhat busier day than others in terms of train movements and maintenance or inspection operations. It is appropriate that the R.C.0. operations be held back on such a day. While Saturday (a preferred rest day) would be the most convenient and acceptable day as the second rest day, it appears that work was scheduled then on an overtime basis. The combination of Friday and Saturday as rest days was, in my view, justified in the circumstances. The same conclusion was reached in

Having regard to the foregoing, it is not necessary to consider Article 8.6, 8.7 and 9.1 which would be relevant only if there were some issue as to work on rest days.

As to the second claim, Article 11.2 of the Collective Agreement is as follows:

> "11.2 Employees will be paid for time travelling in boarding and sleeping cars, on orders of the Railway, under the following conditions only:
>
> (a) during regular working hours, or
> (b) between 12:01 a.m. and 6:00 a.m. provided the employees concerned have to work that day, or
> (c) between 6:00 a.m. and 10:00 p.m. on a regularly assigned rest day or on a general holiday.
>
> Payment under the foregoing conditions shall be at straight time."

Members of the R.C.0. gang did in fact travel on boarding and sleeping cars on Sunday, May 24, 1981. That was not a rest day. The employees, therefore, were entitled to be paid for travel time during regular working hours on that day, pursuant to Article 11.2 (a). They were so paid. They were not entitled to be paid pursuant to Article 11.2 (c), as it was not an assigned rest day on their schedule.

Accordingly, neither of the claims is Well-founded, and the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.