CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1193

Heard at Montreal, Wednesday, February 15, 1984
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed Trainman D. R. Fast, Sutherland, who was assessed 10 demerit marks for failure to accept call and report for duty after having in excess of eight hours' rest when required and no other spare man was available, April 24, 1983.

JOINT STATEMENT OF ISSUE:

Trainman D. R. Fast booked 15 hours and 25 minutes rest on arrival at the home terminal at Sutherland at 1435, April 23, 1983. At about 2350, April 23, Trainman Fast called the yard office as he was advised that they had been attempting to call him and at that time he was told he must accept a call to deadhead to Prince Albert to work the 0630 yard assignment.

Trainman Fast had booked rest until 0600 and had not been to bed since arriving on the previous trip. Therefore, he was not properly rested and for this reason he refused to accept the call to report for duty.

The Company conducted an investigation and following the investigation assessed discipline of 10 demerit marks on the record of Trainman Fast.

The Union contends that no discipline was warranted as the rest booked was within the provisions of Article 26, Clause (a) of the Collective Agreement.

The Union further contends that Article 37, Clause (d) (3) (b) (i), clearly makes provision for booking rest in excess of 12 hours and the only penalty allowed for this is a reduction in monthly guarantee.

The Company contends that Trainmen are required to accept a call after they have been off duty for 8 hours, no matter how much rest is booked, when there are no other Trainmen available and that in this instance, the discipline assessed was justified.' The Company declined the Union's request to remove the discipline of 10 demerit marks from the employee's record.

FOR THE UNION: FOR THE COMPANY:

(SGD.) J. H. McLEOD
FOR: P. P. Burke, General Chairman

(SGD.) E. S. CAVANAUGH
General Manager
Operation and Maintenance.

There appeared on behalf of the Company:

F. B. Reynolds - Supervisor Labour Relations, CPR, Winnipeg
R. D. Falzarano - Asst. Supervisor, Labour Relations, CPR, Winnipeg
B. P. Scott - Labour Relations Officer, CPR, Montreal

And on behalf of the Union:

P. P. Burke - Vice-President, UTU, Calgary
J. H. McLeod - General Chairman, UTU, Calgary
R. Proulx - Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

At the end of his run at 14:35 on April 23, 1983, Spare Trainman D. R. Fast booked rest until 0600 the following morning. The grievor's decision to book off was done in accordance with Article 26, Clause (a) of the collective agreement which reads as follows:

> " A trainman will not be required to leave a terminal until he has had at least 8 hours' rest if desired, but such rest must be booked on the train register when going off duty. In no case, if rest is booked at the terminal, shall it be for less than five hours."

At 2350 on April 23 Trainman Fast was asked to accept a call to deadhead to Prince Albert to work an 0630 yard assignment. Apparently two colleagues who were called to do the same assignment were unavailable. It is coamon ground that the grievor refused to answer the call. He simply took the position that he had properly booked off on rest until 0600 the following morning. Despite the employer's warning that appropriate disciplinary action would follow his refusal, the grievor was not persuaded to report. Accordingly the grievor was assessed 10 demerit marks for his alleged insubordination.

The trade union has taken the position that pursuant to Article 26 (a) of the collective agreement the grievor was entitled to assess his condition and make a determination whether "at least 8 hours rest" was sufficient to enable him to report for work. In light the lack of sleep the grievor incurred since he booked off earlier that day and owing to the unanticipated call to report for work, the grievor properly determined that "at least 8 hours rest" was not enough. The trade union argued quite vigorously that it remains a part of the employee's own discretion, pursuant to Article 26 (a), to decide whether he is sufficiently fit to report for work after the eight hour minimum rest period guaranteed under that provision has elapsed.

I find no merit in that position. I agree that an employee who books rest under Article 26 (a) is guaranteed " at least eight hours rest".

After the expiry of eight hours he must be ready, particularly in manpower emergencies, to respond to an employer's call to report for duty. In other words, the eight hour rest period represents a minimum guarantee that cannot be undermined by the employer manpower concerns. The phrase "at least eight hours rest" is not however an invitation enabling the employee to assess whether he is fit to report for work after an eight hour period of rest has elapsed.

Indeed, this position seems to be reinforced, as the employer submitted, under Article 37, Clause (d) (3) (b) (i) of the collective agreement which reads in part:

> "....the latter condition does not preclude the calling of an employee for duty after expiration of 8 hours' rest if no other spare employee is available for duty."

Even though I do not accept the trade union's interpretation of Article 26 (a) of the collective agreement, I do find some merit in the grievor's particular situation in the representations that underlied its argument. It is common ground that had the grievor answered the call he would have gone approximately 36 hours without sleep at the completion of his shift the following day. In my view that situation would have clearly represented a safety hazard to himself, his colleagues and the general public. Indeed, in reaching this conclusron it is an irrelevant consideration whether the grievor should have slept the eight hours he was off duty prior to the employer's call or whether he is duty bound to anticipate such calls. I am satisfied that had he reported for work in answer to the call, he would have represented a direct threat to safety.

Accordingly, I am satisfied that considerations with respect to safety are excepted from the arbitral principle that an employee should obey his employer and grieve an objection to complying with an order at a later date. Albeit the grievor may have appeared insubordinate when contacted by the employer, he had good cause to resist the call. For that reason the employer was without just cause for discipline. Accordingly, the employer is directed to remove the ten demerit marks from the grievor's record.

DAVID H. KATES,
ARBITRATOR.