CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1266

Heard at Montreal, Wednesday, July 11, 1984

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

A time claim by tbe Brotherhood that the Corporation violated Article 4.12 of Agreement 2, when Mr. K. Musgrave, Montreal, was not paid wages in accordance with said Article for trips originating from Montreal, train 59, June 10 and 24, 1983.

JOINT STATEMENT OF ISSUE:

The grievor, a spare board employee, worked as a Sleeping Car Conductor, June 10 and 24, trains 59/58. Such assignments were not part of the regular assignment. Mr. Musgrave was paid for hours worked, and held time at away from home location.

The Brotherhood contends that Article 4.12 was violated when the grievor was not paid on a minute basis from the time he came on duty on the days in question at his home terminal (Montreal) up to and including the time he came off duty at his home terminal (Montreal).

The Corporation contends that the grievor was called for work in accordance with the provisions of Article 7.2 (v); correctly paid under Article 4.12 for hours worked and under Article 4.18 (d) (ii) for held time at distant terminal.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) TOM McGRATH	(SGD.) A. GAGNE
National Vice-President	Director, Labour Relations

There appeared on behalf of the Corporation:

Andre Leger	- Manager, Labour Relations, VIA Rail Canada Inc., Montreal
A. Cave	- Manager, Human Resources, VIA Rail Canada Inc., Montreal

There appeared on behalf of the Brotherhood:

G. Thivierge	- Regional Vice-President, CBRT&GW, Montreal
K. Cameron	- Local Chairman, CBRT&GW, Montreal

AWARD OF THE ARBITRATOR

There is no dispute that Mr. K. Musgrave reported for work off the spareboard at 2135 hours on Friday June 10 and Friday June 24, 1983, for trips (59) originating in Montreal, Quebec, arriving at Toronto the following morning and was required to work the trips (58) originating in Toronto on Sunday June 12 and Sunday June 26, 1983, at 1935 hours destined for Montreal. The issue pertains to whether Articles 4.12 or 4.18 (d) (ii) govern the grievor's entitlement to payment for the "layover" or "held time" at the distant terminal in Toronto.

Articles 4.12 and 4.18 (d) (ii) of Agreement 2 read as follows:

> "4.12 Spare employees performing unassigned service will be paid on a minute basis with minimum of four hours for each call for terminal duty, and minimum of four hours for a one-way trip and 8 hours for a round trip."
>
> "4.18 (d) Employees assigned to special movements and held at the distant terminal will be paid held time as follows:
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> (ii) Employees assigned to extra equipment attached to a result train (or sections thereof) and employees used to augment regular crews who are held beyond the regularly scheduled departure time of the first train returning to their home terminal following expiration of eight hours after their release from duty will be paid eight hours for each 24-hour period so held or actual time of up to eight hours for less than a 24-hour period. Time in such cases to start at the expiration of eight hours after release from duty."

There is also no dispute that Mr. Musgrave was called off the spareboard to service train runs 59 and 58 on the days in question pursuant to Article 7.2 (v), dealing with "extra road service, including (the) augmenting of crews". At all material times train runs 59 and 58 were regularly scheduled passenger runs to and from Montreal and Toronto. Prior to the circumstances giving rise to this grievance the employer assigned regular employees to these runs. As such, these employees with respect to their terms and conditions of employment were governed by "Operation of Run Statement - (0.R.S.)" as defined by Article 1.1 (c) of the collective agreement. Because of the employer's changed policy "spareboard employees" were called to service these runs. Since these employees (off the spareboard) were not relieving regularly scheduled employees, their terms and conditions of employment were not governed by an "0.R.S." (see Article 4.11). Rather, Mr. Musgrave at the time in question was performing "unassigned" service which entitled him to be pai while performing those services in accordance with Article 4.12 of Agreement 2.

The employer has agreed to pay the grievor in accordance with Article

4.12 for the period of time hewas performing "unassigned services". As a result, while operating on the two runs in question the grievor was paid accordingly. Once "released" from duty upon his arrival at Toronto, the employer insisted that the grievor during the period of his layover is to be paid "held over time at a distant terminal in accordance with Article 4.18 (d) (ii). Accordingly, the question to be answered is whether a regularly scheduled passenger run serviced by an unassigned crew off the spareboard represents a "special movement". There is no doubt from the employer's perspective that the grievor "augmented" the regular crews that went off service on the Fridays prior to the originating passenger runs from Montreal to Toronto.

In dealing with this aspect of the employer's argument I am satisfied, having regard to the express language of Article 4.18 of the collective agreement, that a regularly scheduled passenger run (albeit serviced by an unassigned crew) is not a "special movement" contemplated by Article 4.18 of the collective agreement. Quite clearly, a "special movement" contemplates either an added train to a regularly scheduled train or an added car to a regularly scheduled train in order to provide augmented train services in unanticipated or emergency conditions. Employees called off the spareboard to service the added train service provided by the employer are governed with respect to their terms and conditions of employment by Article 4.18 of the collective agreement. More particularly, those spareboard employees, (although providing unassigned services), who are assigned to special movements are governed by Article 4.18 (d) (ii) with respect to layover time at a distant terminal. It is my opinion, however, that Mr. Musgrave while servicing a regularly scheduledpassenger run off the spareboard, was not engaged as described aforesaid in servicing a "special movement" as contemplated by Article 4.18 of the collective agreement. Accordingly his entitlement to layover pay was not governed by Article 4.18 (d) (ii) of the collective agreement. In this respect I have relied on CROA Cases 188, 477, 694, and 925 in reaching my conclusions as to what constitutes "a special movement".

If Mr. Musgrave's layover entitlement while at Toronto is not governed by Article 4.18 (d) (ii), does it necessarily follow that his held over time at a distant terminal is governed by Article 4.12 of the collective agreement?

In answering this question I am compelled to agree with the employer's submissions. Once "released" from the performance of service upon arrival at Toronto, the employer's obligations under Article 4.12 with respect to Mr. Musgrave were met. The grievor was paid for the performance of the unassigned services "on a minute to minute basis". During the period of being held over at Toronto he was released from duty as was contemplated by Article 1.1 (o) and (p) of the collective agreement which reads as follows:

> "1.1 For the purpose of this Agreement:
>
> (o) "Release Time" - the time at which an employee is released from duty.
>
> (p) "Elapsed Time Enroute" - the total hours

from reporting time to release time."

In accordance with its obligations under Article 4.12 the employer paid Mr. Musgrave for the performance of his unassigned services on Runs (59) and (58) on a minute to minute basis "for the total hours worked from reporting time to release time". Absent in Article 4.12 is any express obligation on the employer's part to pay the grievor for the layover time while at Toronto between the termination of Run (59) and the commencement of Run (58). Accordingly, I have concluded that the grievor is without entitlement to any layover benefit for the unassigned services performed on regularly scheduled runs as described in this decision.

When this potential "gap" in the collective agreement was pointed out to the trade union's representative during the course of the hearing, Mr. Thivierge indicated he would be content with that result. In his view the employer's obligations with respect to such spareboard employees would be governed by other provisions of the collective agreement. For example, Mr. Thivierge suggested that the employer would be obliged to "deadhead" the spareboard employee back to Montreal (see Article 4.14) or to permit him to return to Montreal in accordance to his preferential rights under the spareboard at the away-from-home terminal (see Article 7.6).Whatever residual rights such employees may have with respect to the operation of the collective agreement, it is apparent that the parties have not negotiated a layover provision with respect to employees called off the spareboard for unassigned services on a regularly scheduled passenger run. Accordingly, the grievor's claim fo payment under Article 4.12 for such "layover" time at the distant terminal must be rejected.

DAVID H. KATES,
ARBITRATOR.