

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1322.

Heard at Montreal, Wednesday, January 9, 1985.

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Claim of Trainman D. E. Hornsby, Winnipeg, for 166 and 136 miles when not available for call and crew run out while still on rest.

EMPLOYEE'S STATEMENT OF ISSUE:

Crew No. 62 with spare Conductor J. Stolar, spare Trainman J. Matkowski and regular Trainman R. Kohut arrived Winnipeg at 1910, November 9, 1982. In accordance with Article 26, Clause (a), 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"; - 24 hours rest was booked for the crew. Trainman Kohut, the only regular crew member arriving thereon, had 24 hours rest booked which effectively tied the entire crew up until 1910 in accordance with the provisions of Article 30, Clause (d) which reads as follows:

"A caboose will not be laid up unless all  
regular members of its crew arriving thereon  
book rest."

Since the advent of Run-Through (Pooled) Caboose, the word caboose has also referred to crews and has been recognized as such by the Company and the Union.

Subsequent to his arrival on November 9, 1982, Trainman Kohut was displaced from Crew 62 and the rest booked for the crew until 1910 was no longer recognized with the result that the crew was called for 1145.

Trainman Hornsby, who had not made the trip on November 9 but expected to go to work on this crew on its next tour of duty, relied on the rest booked for the crew until 1910 and was not available for the call for 1145 with the result he lost two tours of duty for 166 and 136 miles respectively.

The Union contends that once rest has been booked for a crew by all

regular crew members arriving thereon, the regular members of the crew are required to respect that rest whether or not they had made the previous trip. The Union further contends that should the regular crew members arriving thereon be subsequently displaced or are allowed leave of absence or otherwise are no longer available for that crew, other members of the crew and following crews are entitled to recognize and are bound by the rest shown on the train register. The Union therefore contends that payment should be allowed.

FOR THE UNION:

(SGD.) J. H. McLEOD  
General Chairman

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There appeared on behalf of the Company:

J.D. Champion - Supervisor, Labour Relations, CP Winnipeg.  
B.P. Scott - Labour Relations Officer, CP Montreal.  
D.A. Lypka - Asst. Supervisor, Labour Relations, CP Winnipeg.

And on behalf of the Union:

J.H. McLeod - General Chairman, UTU, Calgary.  
P.P. Burke - Vice President, UTU, Calgary.  
I.L. Robb, Vice General Chairman, UTU Thunder Bay.  
L.O. Schillaci - Secretary, UTU, Vancouver.

#### AWARD OF THE ARBITRATOR

The question that must be answered in determining the legitimacy of the grievor's claim is whether the crew of which he was a regular member should have been "laid up" on November 10, 1982, in accordance with Clause (d) of Article 30 of the collective agreement. There is no dispute that trainman Kohut properly booked rest at the end of his run on November 9, 1982 and would have legitimately tied up the grievor's crew had he not been displaced into another crew. Clause (d) of Article 30 reads as follows:-

"A caboose will not be laid up unless all regular members of its crew thereon book rest."

What has triggered this dispute was the company's decision, owing to low traffic, to rearrange its work force. The resultant displacement actions caused Trainman Kohut to be bumped from the regular crew of which he was a member at the time of booking rest to another crew. And it was the grievor, Trainman D.E. Hornsby, that displaced Trainman Kohut thereby making the grievor a regular member of that crew.

It is common ground that Trainman Kohut's status as a displaced member of the crew would not have been made effective until he arrived at the final terminal at the end of his run on November 9, 1982. And, coincidentally, it was at that very time that he exercised his entitlement to book rest. And in accordance with

Article 26 of the collective agreement, the Conductor of the crew wrote in the register the notation "rest reg. crew 24 hours". And, indeed, it was this notation that induced the grievor into the belief that the crew of which he was now a regular member had been laid up in accordance with Clause (d) of Article 30. Article 26 provides:-

"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..."

I accept the company's position that Clause (d) of Article 30 is intended to operate to the advantage of the person booking off rest in order to protect work opportunities that might arise during the period of his rest. Moreover, it is quite clear that Mr. Kohut would not profit from that advantage in this case because he was legitimately and properly displaced into another crew at the time he booked off rest. I was not left with the impression that the trade union disagreed with either of these conclusions.

Nonetheless, the trade union maintains that the grievor's displacement to another crew, albeit coincidental with his booking rest, does not alter the status of his former crew as a result of Clause (d), Article 30. In the trade union's view Mr. Kohut's action served "to freeze" the crew until the expiry of his rest period. As a result, the company was in error in having dispatched that crew on November 10, 1982 before that rest period expired. Accordingly, the grievor's entitlement to full recompense was warranted for being unavailable for call when the crew should have been on rest.

I must agree with the trade union's position. In having regard to application of the collective agreement I am satisfied that other rights and entitlements accrue to bargaining unit employees other than the employee booking off rest. Although the latter is the principal beneficiary of Clause (d) Article 30 it is readily apparent that the requirement to register "booking rest" under Article 26 is intended to serve as notice to all interested persons to govern themselves accordingly. And that is exactly what the grievor did. He arranged his affairs to accommodate the grievor's exercise of his Right to book off rest that arose while he was a regular member of an appropriate crew. And the consequence of that event, as anticipated by Clause (d) of Article 30, was to lay up the crew for the duration of the rest period.

In short, I cannot attach any other useful purpose to the imposed requirement to register "booking rest" under Article 26 of the collective agreement other than it serves to notify interested parties including the employer to govern themselves in accordance with the exigencies of the relevant provisions of the collective agreement. And the fact that the person booking off rest may not profit from that provision, for whatever the reason, does not alter the status of the crew during that rest period.

Accordingly, the grievance succeeds. The company is directed to pay Mr. Hornsby his claim as alleged in his grievance. I shall remain seized.

DAVID H. K  
ARBITRATOR.