CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1387

Heard at Montreal, Wednesday, July 10, 1985

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Alleged violation of Article 1.1(c) of Collective Agreement No. 2.

JOINT STATEMENT OF ISSUE:

Effective September 7, 1984, VIA West issued Operation of Run Statements (0.R.S.) advertising positions for trains 8-7 showing Winnipeg as home terminal, Capreol (& Armstrong) as the distant terminals of the run.

Due to train rescheduling, the 0.R.S. were reissued effective October 29, 1984 showing Winnipeg as the home terminal and Capreol as the distant terminal with a scheduled intermediate stopover at Sioux Lookout detailed on the 0.R.S.

The Brotherhood contends that the Corporation violated Article 1.1(c) and requests cancellation of assignments and compensation for employees assigned to the run.

The Corporation maintains that the Collective Agreement was not violated and rejects the Brotherhood's request.

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:

C. 0. White - Labour Relations Assistant, VIA, Montreal
J. Kish - Personnel & Labour Relations Officer, VIA, Montreal

And on behalf of the Brotherhood:

A. Cerilli - Representative, CBRT&GW, Winnipeg

AWARD OF THE ARBITRATOR

The trade union alleged that the company was in violation of Article 1.1 (c) of collective agreement No. 2 when it made Sioux Lookout an intermediate stopover for trains 8 - 7 on the Winnipeg - Capreol run. As the evidence and the discussion of this grievance developed it appeared that the trade union could point to no infraction by the company with respect to the completeness and the propriety of the Operation of Run Statement (0.R.S.) prepared by the company containing Sioux Lookout as a stopover. What in essence is the trade union's dispute is the failure by the company to credit the layover time spent at Sioux Lookout as appropriate for payment. In short, in the trade union's view the only period spent on layovers that the company is permitted to deduct from a crew's pay period are layovers at the home (Winnipeg) and distant (Capreol) terminals. In this regard it was argued that the grievors should have been credited for payment for the layover at Sioux Lookout pursuant to Article 4.6 of Agreement No. 2:

> "4.6 Assigned employees held out of service at a point enroute shall be credited with 8 hours for each 24-hour period or the actual time of up to 8 hours for less than a 24-hour period."

The employer argued that the grievors' entitlements were governed by the 0.R.S. and the relevant provisions of the collective agreement that governed each item listed therein. In this regard the grievors were credited appropriately for all items that warranted payment. More particularly, the appropriate deductions for layover periods were also made in accordance with the provisions of the collective agreement. In this particular regard it was argued that since Sioux Lookout was an appropriate "away-from-home" terminal the only credit that the grievors could be given for layover time is if the layover exceeded the time reserved for that purpose on the 0.R.S.. Since this did not transpire Article 4.5 governed the grievors' entitlements:

> "4.5 Assigned employees on a regular run who are held at their away-from-home terminal beyond the established layover period shall be credited with 8 hours for each 24-hour period, computed from expiration of their layover period, and actual time up to 8 hours for less than a 24 hour period."

The issue in this case reduced itself to whether Sioux Lookout, the intermediate point, could be considered as an "away from- home terminal". The trade union insisted that only one away-from-home terminal can exist on a passenger run, i.e., the distant terminal. The employer on the other hand, argued that more than one away-from-home terminal inclusive of the distant terminal can be comprised on a passenqer run. In short, from the company's viewpoint all terminals on a run that aren't home terminals may be categorized as "away-from-home" terminals.

As noted during the hearing there does not appear in the collective agreement any definition of an "away-from-home terminal". In this light it seems patently obvious that if the scope of Article 4.5 was intended to be restricted to distant terminals, the subsection would have aaid so. Rather, reference was made to an away from-home terminal in Article 4.5 where a penalty premium is payable only where a layover exceeds the time established for that purpose on the 0.R.S.. And, consiste with all layovers is the notion, whether at the home or distant terminal, that time spent is not to be credited for pay purposes. Accordinglv, there has been no provision of the collective agreement brought forward to suggest that a layover which occurs at any terminal that is not a home terminal, should not be treated for pay purposes in accordance with Article 4.5 of the collective agreement.

Moreover, it is my view that Article 4.6 is intended to provide a penalty premium for each hour that a crew is taken out of service at an intermediate point en route of a run that has not been scheduled in the 0.R.S.. For example, an emergency may very well occur en route that may not have been anticipated and required the crew being taken out of service. In that instance, to the limit of 8 hours in a 24 hour period the company is required to compensate the grievors for the delay and inconvenience.

It is my view however, that that provision does not apply to a scheduled layover reflected at an away-from-home-terminal on the 0.R.S.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.