CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1498

Heard at Montreal Tuesday, April 8, 1986

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of 43 hours and 5 minutes pay for D. Nadler on account of not being assigned to vacancy on June 18, 1985.

JOINT STATEMENT OF ISSUE:

Mr. D. Nadler had declared himself available for work during his layover in accordance with Article 7.8 (d) (1).

On June 18, 1985, a vacancy occurred for a Sleeping Car Conductor on Train No. 2/1, Vancouver to Calgary and return, that could not be filled from the Spareboard.

The Brotherhood has grieved that Mr. Nadler should have been assigned to the vacancy as the vacancy occurred during his layover and that the assignment could have been completed before the expiration of his layover.

The Corporation declined the appeal on the basis that Mr. Nadler was not on his layover, or additional layover, as referred to in Article 1.1 (b) and 1.1 (c), but rather was waiting to pick up his assignment while being covered by his guarantee. As such, he was not, at that time, eligible to cover extra work under Article 7.8 (d) (1).

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. N. STOL	(SGD.) A. GAGNE
FOR: National Vice President	Director Labour Relations

There appeared on behalf of the Corporation:

C. 0. White	- Officer, Labour Relations, VIA Rail Canada Inc., Montreal
M. St-Jules	- Manager, Labour Rhlations, VIA Rail Canada Inc., Montreal
J. Kish	- Personnel & Labour Relations Officer, VIA Rail Canada Inc., Montreal
S. Egesborg	- Observer

And on behalf of the Brotherhood:

J. A. Craig - Regional Vice-President, CBRT&GW, Vancouver

AWARD OF THE ARBITRATOR

The parties have joined issue on whether the period between June 3, 1985 and June 22, 1985 can properly be designated as a layover or additional layover period that would make Article 7.8 (d) (1) a relevant consideration with respect to the grievor's claim to be entitled to perform extra work.

The parties are also agreed that if the period in question - designated as a layover or additional layover period then the employer improperly assigned the extra work in question to a less senior employee. Article 7.8 (d) (1) reads as follows:

> "Qualified assigned employees who have declared themselves, in writing, as available for work during layover, including additional layover, in seniority order providing the assignment can be completed during such layover days and the rate of pay for the classification required is equal to or higher than their assigned position."

The grievor's winter assignment expired on June 3, 1985. His 0.R.S. provided that the period between May 30 and June 3, 1985 was to be a layover period. As I understand the parties' perceptron of the collective agreement "a layover" is mandatory upon the completion of eight consecutive work days.

In May, 1985 the grievor bid and secured a summer work assignment that was scheduled to coxmence on June 22! 1985. Indeed, the 0.R.S. for that assignment was attached to the job b?d that the grievor responded to. It indicated that the 0.R.S. was not effective until the commencement of work on June 22, 1985.

Accordingly, the grievor between June 3, 1985 and June 22, 1985 was not covered by an 0.R.S. because during that period he had no work assignment. Moreover, the grievor was not on "an additional layover" for that same reason. Again, as I understood the parties' perception of their collective agreement "an additional layover" is additional time off work an employee's home terminal that would, if worked, take the employee out the mandatory average work period permitted by the collective agreement. And, again, such "additional layover" periods are normally scheduled on a 0.R.S. in that it forms a part of the work cycle of an employee's regular assignment.

Accordingly, the employer argued that the grievor, because he was in between assignments, could not be considered as being on an 0.R.S. Since the period between June 3, 1985 and June 22, 1985 could not qualify for that reason, for designation on an 0.R.S. that period could not be characterized as either a layover or an additional layover period. As a result the benefits of Article 7.8 (d) (1) could not be extended to the grievor. In that regard Articles 1 (1) (b) and 1 (1) (c) of the collective agreement provide:

"1.1 (b) "Additional Layover" - means additional time off duty at home terminal over and above regular scheduled layover between trips as designated in "Operation of Run Statement".

1.1 (c) "Operation of Run Statement - (0.R.S.)" means a statement covering assigned runs which will show:

Home and Distant Terminal
Frequency of Operation
Number of Crews
Additional Layover (if any)
Cycle of Operation
Effective Date
Reporting Time
Passenger Reception Time
Departure Time
Arrival Time
Release Time
Elapsed Time
Rest Hours Deductible
Net Hours Duty
Layover at Home and Distant Terminals."

The trade union, on the other hand, insisted that because layover is not defined under the collective agreement a common sense definition would suggest that the term be described as merely "time not worked between assignments". If that be the case the trade union insisted that it was not necessary for the layover period to be designated on the 0.R.S. Or, alternatively, it was submitted that either the grievor's winter assrgnment or his summer assignment be amended on the relevant 0.R.S. to accommodate the technical shortcoming complained of.

The simple issue raised in this case is whether an employee who otherwise would meet all the qualifications for an extra work assignment under Article 7.8 (d) (1) must hold a regular assignment that is subject to an 0.R.S. to qualify, during dormant periods,for its benefits. And, from the trade union's perspective, it expressed concern that the seniority governing the grievor's entitlements under the collective agreement be protected.

It must be emphasized that when the grievor bid on his summer assignment he was made aware of the 0.R.S. cycle he would be subjected to in carrying out that assignment. He also was aware of the specified periods that were reserved for layover and additional layover, if required, by that work cycle. Of utmost importance he was well aware that the period of June 3 to June 22, 1985 was not designated as either a layover or additional layover period.

And the reason for that, as argued by the corporation, is because the grievor was not at that time covered by any assignment. The 0.R.S. reflects the cycle of work and non-work periods that pertain to the discharge of a particular work assignment and that must obviously conform to the requirements of the collective agreement. They reflect the manpower needs of the employer in operating a passenger

rail service. And, as such, the parties have restricted under Article 7.8 (d) (1) the benefits of extra work to employees who are either on layover or additiona layover as defined on the 0.R.S. Accordingly, because the grievor was not on assignment during the period in question he could not, despite his seniority,qualifications and availability, qualify that dormantperiod when he was not working, as Article 7.8 (d) (1) requires,as a layover or additional layover period.

It may very well be that the grievor's status for that period (despite his being paid) may be characterized as a lay-off for which other benefits under the collective agreement may have been relevant and for which his seniority could have been better served. But no such argument was advanced at the hearing in that particular context.

In other words, I feel constrained to define layover and additional layover period in the specific and particular context of the parties' collective agreement. And, as aforesaid because in that context, the grievor, during the period in question,did not qualify for the benefits of Article 7.8 (1) (d), his grievance must be denied.

DAVID H. KATES,
ARBITRATOR.