CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 32

Heard at Montreal, Monday, April 18th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Chef W. Wayslow, Vancouver District, for 11 hours and 30 minutes loss of layover compensation due to late arrival of Train No. 1 at Vancouver.

JOINT STATEMENT OF ISSUE:

Train No. 1, to which Chef Wayslow is regularly assigned, is scheduled to arrive in Vancouver at 10:15 A.M. On January 5th, 1966, it did not arrive until 10:15 P.M., 11 hours and 30 minutes late.

The assigned lay over of Chef Wayslow's assignment specified in the Operating Schedule is 80 hours and 5 minutes at Vancouver. As a consequence of the late arrival of Train 1, Chef Wayslow received 68 hours and 35 minutes layover before again reporting for duty for his regular assignment.

Chef Wayslow claimed 11 hours and 30 minutes loss of layover compensation in respect of the layover lost as a result of the late arrival of Train 1 at Vancouver. This claim was declined by the Company on the basis of the wording contained in article 7, clause (d), of the collective agreement.

In declining the claim the Brotherhood alleges that the Company has violated the provisions of article 7, clause (c), of the collective agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY
(SGD.) J. R. BROWNE	**(SGD.) THOS. P. JAMES**
GENERAL CHAIRMAN	**MANAGER, S.D.P.C. & N.S.**

There appeared on behalf of the Company:

T. P. James	– Manager, S.D., P.C. & N.S., Montreal
J. W. Moffatt	– General Superintendent, S.D., P.C. & N.S., Montreal

And on behalf of the Brotherhood:

J. R. Browne	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

As indicated the issue giving rise to the dispute is the refusal of the Company to recognize claims of dining car employees for compensation in respect of loss of layover due to late arrival of trains at the home station and turn-around point.

Train No. 1, to which the claimant is regularly assigned, was scheduled to arrive in Vancouver at 10:45 A.M. On January 5, 1966, it did not arrive until 10:15 P.M., 11 hours and 30 minutes late.

Mr. Browne told that this assignment was posted on form D.C. 168 that showed the hours of service, the hours of rest and the hours of layover at the home and away-from-home terminal. He claimed the hours of service and the hours of layover are both earnings of an assignment for which an employee bids. In this case the assigned layover was 80 hours and 5 minutes. Because of the late arrival of Train 1, the claimant received 68 hours and 35 minutes layover before again reporting for duty for his regular assignment. His claim is for the 11 hours and 30 minutes loss of layover compensation resulting from the Company's action because of the late arrival.

Mr. Browne's contention was that this violated the provisions of article 7, clause (c) of the agreement, reading:

> Employees required to forego layover in order to perform road service will be paid on the following basis over and above their monthly guarantee.
>
> Reduction of layover
>
> 1 hour – 1 1/2 hours will be paid;
>
> Reduction of layover
>
> 2 hours – 3 hours will be paid.
>
> Up to 8 hours on the same basis, after which up to 24 hours, 12 hours will be paid.

It was Mr. Browne's submission that there is no wording in the collective agreement that states when a train is late and an employee loses layover due to such late train, that he will not be paid for any loss of layover brought about by reason of performing this extra road service.

Clause (d), the Company's authority for the action taken, he maintained only indicates that where a train is 24 hours or more late the employees will earn extra layover or compensation in lieu of. Emphasizing the word "extra" in this provision, Mr. Browne suggested it would be impossible for an employee to have more than normal layover before first having earned the assigned layover.

For the Company Mr. James claimed the declination of this claim is in conformity with article 7(d) and there is no violation of article 7(c).

Article (d) reads:

> Employees delayed in return to home station or turn-around points, account interruption in train service will, where trains are 24 hours or more late, be given extra layover or paid compensation for the hours in excess of twenty-four. Layover compensation will be computed as in clause (c).

Mr. James relied upon the past history of these provisions to support his submission. Article 7(d) came into the agreement in its present form following a Conciliation Board's recommendation. As recently as April 1, 1964, the Brotherhood served notice on the Company of their desire to revise and supplement the existing agreement. Among these demands they included this proposal:

> Rule to provide compensation for late arrival of trains at home or away from home terminal.

At a meeting held in Montreal on April 20, 1964, according to signed minutes of proceedings, the General Chairman stated:

> Compensation is paid for the hours worked. If you arrive late there is an infringement on the layover involved. There is no compensation for this. There are many instances where a man does not get paid whatsoever for late arrivals. We wish to alleviate this condition.

While settlement was reached in July, 1964, on all other matters, this request for a change in article 7(d) was not granted.

Mr. James expressed the opinion there is no ambiguity in either articles 7(c) or (d). This leaves the interpretation open to assigning their ordinary meaning to the words used, apart from how any particular individual has analysed them in the past.

Commencing with article 7(c), the words used are plain:

> Employees required to forego layover in order to perform road service …

There can be no question that in the circumstances related the claimant was required to forego 11 hours and 30 minutes of the 80 hours and 5 minutes of the assigned layover period that had been guaranteed him in the posting. It is also clear that this came about because he was required to perform road service. There is no qualification to that general term as used.

Here a comparison with the provisions in article 7, clauses (a) and (b) is helpful. The first provides for compensation for loss of layover when called upon during assigned layover to perform service other than his regular assignment and on a different run.

Clause 7(b) provides for compensation for loss of layover on the basis of clause (c) when required to perform other service.

As stated, however, article 7(c) is uncluttered by any such qualifying requirements. Road service alone is sufficient.

Can we find anything in clause 7(d) indicating the parties did not intend what I have found 7(c) plainly states. It reads:

> Employees delayed in return to home station or turn-around points, account interruption in train service will, where trains are 24 hours late, be given extra layover or paid compensation for the hours in excess of twenty-four. Layover compensation shall be computed as in clause (c).

Here the word to be underlined is “extra”. Mr. Browne suggests a dictionary meaning, since it is undefined in the agreement, as “more than normal”. If an employee comes within 7(c), in my opinion 7(d) can only be reasonably interpreted as providing for additional compensation to what was guaranteed in the posting if arrival is delayed by 24 hours.

There is nothing in article 7(d) indicating the parties have mutually agreed that for anything less than 24 hours late arrival an employee who came within the provisions of 7(c), as I have found this claimant did, was to lose any part of the layover time guaranteed him in the posting article 7(d) is something over and above that which had been provided. In other words, in this case 80 hours and 5 minutes was assured. In the event of the one contingency described, a delay in excess of 24 hours, something more was to be added.

For these reasons this claim is allowed.

(signed) J. A. HANRAHAN
ARBITRATOR