

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 46

Heard at Montreal, Monday, September 12th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Assessment of discipline to Conductor J.F. Morin, Trainmen J.P. St. Pierre and A.G. Pelletier, Quebec Central Railway, account claiming time subsequent to rest booked at East Angus, Quebec, October 19th to 20th, 1965.

JOINT STATEMENT OF ISSUE:

On October 19th, Conductor J.F. Morin, Trainmen J.P. St Pierre and A.G. Pelletier were called for 7:00 a.m. for Extra 8025, Sherbrooke to Thetford Mines on a turnaround basis. Crew performed all work required of them enroute until they pulled into the siding at East Angus at approximately 7:25 p.m. to clear Train No. 4. Crew then booked six hours rest as per Article 26 of the collective agreement. However, crew did not report for work at 1:30 a.m. but at 2:47 a.m. 1'17" after their rest had expired, following call made by Operator Caron, East Angus. When submitting wage ticket for trip, Conductor Morin claimed continuous time for the round trip, less the six (6) hours rest booked. Total time on duty 21 hours, less 6 hours rest, total claim 15 hours.

Following their next tour of duty the crew was then notified they were being taken out of service for investigation and subsequently the Company debited the record of Conductor Morin with twenty-five (25) demerit marks and the records of Trainmen St. Pierre and Pelletier with fifteen (15) demerit marks each for claiming payment for time not worked subsequent to six (6) hours rest at East Angus, October 19th to 20th, 1965.

The Brotherhood of Railroad Trainmen requests removal of the discipline assessed each member of the crew and full payment for all time lost which the Company has declined.

FOR THE EMPLOYEES:

(SGD.) J. I. HARRIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. M. HAND
GENERAL MANAGER

There appeared on behalf of the Company:

R. Colosimo – Supervisor, Personnel & Labour Relations, Montreal
F. S. Champagne – Manager, Quebec Central Railway, Sherbrooke

And on behalf of the Brotherhood:

J. I. Harris – General Chairman, Montreal
H. L. O'Neill – Secretary, G.G.C., Smiths falls
J. F. Morin – Local Chairman, Sherbrooke

AWARD OF THE ARBITRATOR

Supplementing the facts disclosed in the Joint Statement of Issue, the representative for the Brotherhood claimed the failure of the employees to report back on duty at 1.30 a.m., after the six hour period they had booked for rest, was due to the failure of the operator to call them at the proper time. They overslept until approximately 2.47 a.m., at which time they were awakened by Operator Caron.

It was also claimed that the van being stopped in front of the operator's window, he could see there were no lights in the van and knew the members of the crew were still sleeping. Sometime prior to 1.30 a.m. the dispatcher started to put out necessary orders to Operator Caron to release Train No. 80. When told by the operator that the crew members were still asleep and asked if he should call them, the dispatcher was alleged to have replied, "Let them sleep".

It was also stated that Conductor Morin had his brakeman's personal stamps in his desk drawer; that it was common practice for regular brakemen to leave their stamps in care of their conductor. In this particular instance the conductor in question is their Local Chairman. It was claimed the brakemen were quite confident their time claim would be made out according to the provisions of the collective agreement. Conductor Morin completed the ticket and mailed it on arrival at the booking-in office. The ticket claimed for six hours rest from the total time shown, namely 21 hours. The Company's claim is the extra hour and seventeen minutes should also have been deducted from that total. This would have amounted to approximately \$3.00 for each of the employees.

The representative of the Brotherhood deplored the method adopted in this instance of penalizing the crew for what he claimed was basically the fault of the operator in not awakening them at the conclusion of the six-hour period. Further complaints were made as to the manner in which Mr. F.S. Champagne, Manager of Quebec Central Railway at Sherbrooke had conducted the investigation as to Conductor Morin. The latter claimed when he appeared just four hours after first notified of the necessity to do so, not finding the other members of his crew present, he requested they be there. He claimed Mr. Champagne told him if he persisted in that request, the matter would have to be adjourned at least ten days. Because one of the crew had a large family and had already lost time due to the investigation being held, he withdrew his request and consented to the proceeding.

For the Company it was claimed that Clause (a) of the Rest Rule, Article 26, governs the requirements under which this crew took advantage of a rest period; that it makes no provision for rest exclusive of the specified amount of call. In other words, the amount of rest booked includes the amount of time required to prepare themselves for duty after awakening and prior to coming on duty. It reads:

Trainmen who have been on duty twelve (12) hours or more will have the right to book rest at any point. The men to be judges of their own condition. When rest is booked enroute eight hours will be considered sufficient, except in extreme cases.

The representative for the Company maintained there was no obligation under this Rule for the Operator to call the crew. If they book off on a rest period, they are required to be back on duty at the time specified and they must make whatever arrangements are necessary to fulfil that obligation.

For the Company it was claimed there was just cause for the disciplinary action taken, inasmuch as these employees sought payment for time not on duty and for work not performed.

During the investigation Conductor Morin was asked:

- Q. When booking rest at East Angus, did you ask to be called?
- A. I had in mind that we would be called but did not specifically remember asking the Operator to call us.
- Q. On what basis did you make claim for time between 1.30 a.m. and 2.47 a.m., when you reported for duty when you were still asleep in the van and had not reported for duty?
- A. Nobody woke us up and it is my understanding that I was automatically on duty after my rest was ended.

Clearly this was a misinterpretation of Article 24, dealing with the Calling of Crews. However, even the representative for the Brotherhood argued at the hearing that it had application. There is nothing in the Rules requiring the Company to call back to duty those who have booked rest enroute. It is their responsibility to make

whatever arrangements are necessary so they will arrive back on duty within the time booked. (An alarm clock, wound, would suffice)

Accepting the version given by Conductor Morin, however, that this was an error in interpretation of an Article of the Agreement, we believe it should have been dealt with on that basis; that the time card should have been returned, pointing out the error, rather than turning it into an official investigation seeking to establish a deliberate attempt to defraud the Company, with the serious implication that would leave on the work records of the employees concerned. I am not satisfied, in view of the explanation offered, that *mens rea* was established justifying a conclusion permitting the disciplinary action to be taken on that basis.

For these reasons I find the twenty-five demerit marks imposed on each of the employees concerned should be expunged from their records; further, that each should be paid the sum he would have earned had he not been held out from duty for the purpose of the investigation.

(signed) J. A. HANRAHAN
ARBITRATOR