CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 74

Heard at Montreal, Monday, September 11th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the interpretation and application of article 2(h), second paragraph, article 3(a) and article 8(c) which are interlocking rules of the current collective agreement.

JOINT STATEMENT OF ISSUE:

Steward F.R. Graham and crew arrived Toronto on delayed Train No. 12 June 6th, 1967, twelve (12) hours and forty (40) minutes late. Steward Graham and crew were required to report at 2.00 p.m. June 10th for their next regularly assigned trip. Steward Graham and crew claimed eight (8) hours at time and one-half for being required to work on what would have been eight (8) hours of normal layover time. These claims were rejected by the Company.

The Brotherhood contends that these employees were required to work on part of their normal layover period and, in rejecting the claims, the Company is in violation of article 2(h) 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, this dispute concerns the failure of the Company to pay the claims asked because of their interpretation of three provisions of the agreement, namely article 2(h), second paragraph, article 3(a) and article 8(c). The second paragraph of article 2(h) reads:

> A regularly assigned employee called from layover for road service will be paid for time worked during layover at one and one-half times the basic hourly rate, with a minimum payment of 8 hours. This payment will be separate and apart from his quarterly guarantee. If position in sequence of operation is not lost, he will be due out on normal departure day, otherwise he will be held for service until he can be restored to his regular line.

The posting for which this crew bid indicated a layover of four days.

The train arrived at Toronto on June 6 at 6.45 a.m., instead of the time it was due to arrive, namely, June 5 at 5.45 p.m.

The representative for the Brotherhood claimed the term "days" not being defined in the agreement, that recourse had been made to the interpretation given for the term "days" in the **Dominion Interpretations Act**, R. S. 1952 and that given in the **Canada Labour Standards Code**. The former, of course, would only apply to legislation in which the term was not defined. The latter, interpreting the term "day" as meaning any twenty-four hour period would have application to any provision enacted under its authority.

It was submitted for the Brotherhood that applying the definition "any twenty-four hour period", this crew was entitled to lay-over from the normal time of arrival until 6.45 a.m. June 9th. By being required to report at 2.00 p.m., June 10, it was claimed it had been held for service from 6.45 a.m. June 9 until 2.00 p.m. June 10, a total of 31 hours and 15 minutes. This, it was urged, would bring into operation article 3 of the agreement.

Article 3, under the heading "hours of Service" reads, in part:

> **(a)** Time will be computed as continuous from time required to report for duty at designated terminal until released at other designated terminal subject to deductions for rest periods en route and at turnaround points. No deductions for release time less than 2 hours will be made.

The representative for the Brotherhood protested what he claimed was a digression from established past practice in the Company not specifying layover time in postings for vacant or new runs in hours and minutes, rather than by the undefined term "days".

Article 8 provides, in part:

> **(c)** Vacant runs: When permanent runs are vacant or new runs created, or there is a general change of service from winter to summer schedule, or from summer to winter schedule, particulars will be bulletined for 10 days and runs will be given to senior qualified men applying in writing, subject to fitness and ability.

Reference was made by the representative for the Brotherhood to decision in **Case No. 32** of the Canadian Railway Office of Arbitration in which a favourable decision was gained by the Brotherhood. Of significance to this decision, however, is the fact that the provision in the preceding agreement, article 7(c), contained the words "required to forego layover". These no longer appear in existing provisions.

The principal thrust of the argument advanced for the Company was based reliance upon this paragraph of article 3(a), reading:

> In regular assignments, time worked in excess of the normal Operating Schedule due to late arrival of trains, up to 576 hours in a Quarter effective June 1, 1967, 546 hours in a Quarter effective December 1, 1967, and up to 520 hours in a Quarter effective June 1, 1968, will constitute part of the regular assignment.

From this provision, it was argued, if a regularly assigned employee is scheduled to work 576 hours or more in a Quarter, which it was said was generally the case, and due to a late arrival he works additional time, this extra time would be paid at one and one-half his basic hourly rate in accordance with article 2(d), reading:

> Time worked in excess of 576 straight time hours, effective June 1, 1967; 546 straight time hours effective December 1, 1967, and 520 straight time hours effective June 1, 1968, in a Quarter, will be paid for at one and one-half times the basic hourly rate on the first payroll following the end of the Quarter.

The claim being made, it was submitted, represented a request for time and one-half for late arrival, plus a penalty time for loss of layover.

It was stressed that neither article 2, clause (d), nor article 3, clause (a), makes any provision for payment of loss of layover due to late arrival of a train.

As to article 8(c) it was submitted for the Company that the Operating Schedule does not override the provisions of the collective agreement. Its purpose was merely to impart general information to employees, to assist them when bidding for assignments. Further, it had to be of a general nature because delayed trains cannot be provided for in such a schedule.

As to the second paragraph of article 2(h) the Company's representative claimed before this clause became operative two conditions must be met: first, layover must have commenced and, second, the employee must have been called to perform road service before his next scheduled reporting time.

An analysis of the foregoing, after a study of the pertinent provisions, leads to the conclusion with respect to article 8, that the term "particulars" not being defined, there is nothing to prevent the Company, (apart from the desirability from the Brotherhood's viewpoint to continue its former practice) to describe layover time by the use of the term "days".

Further, a study of the second paragraph of article 2(h) convinces its purpose is to provide for a call from layover for road service other than that required of an employee on his normal departure day. This is indicated by the words used, "If position of operation is not lost, he will be due out on normal departure day …"

Finally, it is clear the parties have specifically provided for payment for time worked in excess of the normal operating schedule due to late arrival of trains in article 3(a). To grant this request, therefore, would result in a pyramiding of benefits without specific authorization.

In that connection, of instructive value is the principle stated in the decision of His Honour, Judge Anderson, in **Ault Milk Products and Retail Wholesale Workers**, in which it was held:

> If a contract is open to two interpretations and one interpretation involves pyramiding of overtime and the other interpretation does not involve the pyramiding of overtime, a Board of Arbitration, in the absence of specific wording in the contract should accept the interpretation which does not provide for the additional penalty payment by reason of pyramiding overtime.

For these reasons I find the claimants were paid in accordance with the existing provisions of this agreement.

(signed) J. A. HANRAHAN
ARBITRATOR