

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 99

Heard at Montreal, Monday, December 11th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Concerning the interpretation and application of article 5, clause (a) of the collective agreement.

EMPLOYEES STATEMENT OF ISSUE:

The Company posted for bid an Operating Schedule for Train No. 1 Montreal to Sudbury showing a deduction for rest enroute of 2 hours and 1 minute.

The crews assigned to Train No. 1 report for duty in Montreal at 12:30 p.m. and arrive at the opposite terminal Sudbury at 12:01 a.m. Total elapsed time is 11 hours and 31 minutes.

The Brotherhood contends that by deducting 2 hours and 1 minute for rest enroute the Company are in violation of article 5, clause (a) of the collective agreement.

FOR THE EMPLOYEES:

(SGD.) J. R. BROWNE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. W. Moffatt - General Superintendent System, Montreal

And on behalf of the Brotherhood:

J. R. Browne - General Chairman, Montreal

AWARD OF THE ARBITRATOR

As indicated, in this matter the Company posted an Operating Schedule for Train No. 1, Montreal to Sudbury, showing a deduction for rest enroute of 2 hours and 1 minute. The crews assigned to this train report for duty in Montreal at 12:30 p.m. and arrive at Sudbury at 12:01 a.m.

It was contended by the Brotherhood that article 5(a) is the governing rest rule; that under a finding in **Case No. 75**, it was held:

I therefore hold the governing words in article 5(a) for the purpose of this determination are "where overnight travel is involved". There is no qualification to that general provision. It is clear language that must prevail over and above anything contained in an operation schedule.

5(a) reads:

Where overnight travel is involved, a maximum of 8 hours may be deducted for rest between the hours of 10 p.m. and 6 a.m. If an employee, having gone on rest, is called for service early, he will be paid for the time worked in advance of scheduled reporting time at one and one-half times the basic hourly rate, separate and apart from his Quarterly guarantee.

In effect, the claim of the Brotherhood is that the ruling in **Case 75** prevents the Company from deducting any rest enroute when trains arrive at a terminal prior to 6 a.m.

In **Case No. 75** the ruling concerned whether or not it was open to the Company to deduct a second night's rest on a delayed transcontinental train when the Operating Schedule, "based on an On-Time performance" showed only one night's rest for the eastbound Toronto crew concerned. In that case overnight travel was involved. That is not so in the matter under consideration. The remainder of the agreement must therefore be considered to find if a provision exists that justifies the action taken by the Company in designating two hours and one minute rest period on this run.

For the Company it was submitted this authority is contained in article 3(a), headed "hours of Service", and reading:

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 turn-around point. No deductions for release time less than 2 hours will be made.

Reference was made by the Company to **Case No. 30**. This involved consideration of the Company's action in releasing from duty employees on the train involved one hour and twenty-five minutes prior to arrival Sudbury, the turn-around point of the assignment. In that award a distinction is drawn between the words in article 3(a) "... until released at other designated terminal" and a deduction for a rest period enroute. It was held:

A study of the article convinces the governing words for time computation on this run for these employees are 'until released at other designated terminal' and that in the circumstances of this particular operation only one hour and twenty five minutes can properly be deducted as a rest period "enroute".

It is to be remembered the Joint Statement of Issue in that claim stated "The Operation Schedule posted showed the employees being released at 10:00 p.m., one hour and twenty-five minutes prior to arrival of Train No. 1 at Sudbury". In effect, the finding held they could not be released until this occurred "at other designated terminal". By the words, "... and that in the circumstances of this particular contention only one hour and twenty-five minutes can properly be deducted as a rest period enroute", the right of the Company to deduct for a rest period was upheld. This, of course, was in conformity with the intent indicated in article 3(a) "... subject to deductions for rest period enroute and at turn-around point".

The significance of the last sentence in article 3(a) "No deductions for release time less than two (2) hours will be made", is to be gleaned from the Example following this provision shown in the collective agreement, in which it is stated, "If not released for two hours or more at turn-around point, no deduction for rest will be made". In other words, "release time" is something entirely different to "rest periods en route".

Section 3(a) clearly contemplates an unspecified deduction for a rest period enroute. The operation schedule under consideration indicates on Train No. 1, Montreal to Sudbury, a Rest Period enroute of 2 hours and 1 minute.

I therefore find the crew in question were paid in accordance with the existing provisions of the collective agreement.

(signed) J. A. HANRAHAN
ARBITRATOR