

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 108

Heard at Montreal, Tuesday, May 14th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Concerning the right of the Company to deduct five (5) hours and forty (40) minutes from the time claims of Steward M.J. Peacock and crew on the night of February 2nd and 3rd by releasing the crew for rest at 10.00 p.m. February 2nd while enroute.

EMPLOYEES STATEMENT OF ISSUE:

Steward Peacock and crew reported for duty at Winnipeg at 10.40 a.m. on February 1st. Their assignment left Winnipeg on time but lost time enroute to Toronto arriving there at 3.40 a.m. February 3rd. Steward Peacock and crew claimed continuous time with one deduction of eight (8) hours for rest on the night of February 1st – 2nd. The Company rejected part of the time claims, the period from 10.00 p.m. February 2nd to 3.40 a.m. February 3rd by releasing the crew for rest at 10.00 p.m. February 2nd.

The Brotherhood contends that this reduction was a violation of Article 5, the governing rest rule of the Collective Agreement.

FOR THE EMPLOYEES:

(Sgd.) J. R. BROWNE
GENERAL CHAIRMAN

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 in the Employees' Statement of Issue, the train on which this crew operated ran late on the trip in question. It was due to arrive in Toronto at 5.45 p.m. on the fourth day of the trip, but did not arrive until 3.40 a.m. the 5th day, being 9 hours and 55 minutes late.

The basic position of the Brotherhood was that although the Company released this crew for rest enroute to Toronto on the fifth night at 10 00 p.m. they had no right to deduct from their pay the period involved between that time and the time of arrival, namely 3.40 a.m. It was contended that this period did not come within the term appearing in Article 5, "commencing where overnight travel is involved, a maximum of 8 hours may be deducted for rest between the hours of 10.00 p.m. and 6 a.m."

Two Articles were quoted in this matter by the representative for the Brotherhood. The first was Article 3, headed "Hours of Service" and reading:

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

For the Brotherhood it was submitted that this provision had never been recognized as a rest rule; that Article 5 was actually the Rest Rule, appearing under the heading "Rest Periods". That article was quoted:

- 5 (a)** 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.

The representative for the Brotherhood also pointed to that portion of the Award in [CROA] **Case 75**, wherein it was held:

Article 5 (a) provides for the deduction for rest of a maximum of 8 hours between the hours of 10.00 p.m. and 6.00 a.m. The only qualification to this rule is that its application is confined to runs where overnight travel is involved.

In further support of the Brotherhood's submission reference was made to **Case No. 676** of the **Canadian Railway Board of Adjustment No. 1**, that dealt it was claimed with the same principle. One point of distinction, however, due to changes made in the existing provisions from what appeared in the former is that rest periods were definitely fixed in the former between the hours of 10.00 p.m. and 6.00 a.m., whereas in the latter there is a qualification brought about by the use of the term "a maximum of 8 hours may be deducted." In other words, something less is now contemplated.

The Company's position before the Arbitrator was fully outlined in the contents of Mr. T. P. James' letter to the General Chairman, under date of March 19, 1968, reading, in part:

The issue in dispute has already been dealt with by the Office of Arbitration in *Case No. 75* and again in *Case No. 99*. In *Case No. 75*, in which the dispute was identical in principle to the one now at issue the Arbitrator took into account both Article 3 (a) and Article 5. Article 5 provides for a maximum rest period of 8 hours on overnight runs and, inasmuch as only 5'40" was deducted, which is less than the maximum of 8 and, in accordance with the provisions of Article 3 (a), which clearly provides for deduction of 2 hours or more for a rest period enroute, it is the Company's position that the deduction made in this instance is in conformity with the provisions of both Article 3 (a) and Article 5.

If, after careful consideration of the awards given in *Cases No. 75* and *No. 99*, it is still your desire to submit this dispute to arbitration, there will be no hesitation on my part to joining you in such submission.

Further study of the provisions in question again supports the conclusion reached in this Arbitrator's previous Awards in *Cases 75* and *99*: Article 3 contemplates rest periods being deducted. Article 5 specifies the maximum time that may be deducted. Article 5 also shows the parties agreeing on 10.00 p.m. as a possible starting time for a rest period.

On the trip in question this crew was released for rest at that hour. Here the term described “a maximum of 8 hours may be deducted for rest between the hours of 10.00 p.m. and 6 a.m.” becomes important. No more than that period may be deducted for rest, but there is nothing to prevent less than that period being so deducted between the hours designated.

Let me here underline with respect to this provision what I held in **Case No. 75**:

The question to be answered then is whether there is anything in Article 3 to provide that in the event an additional rest period is made necessary by a train operating late, it is not to be deducted. I can find nothing to that effect.

As in that case, I find the members of this crew were paid in accordance with the existing provisions of the agreement.

(signed) J. A. HANRAHAN
ARBITRATOR