CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 136

Heard at Montreal, Wednesday, November 13th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Concerning the interpretation and application of Article 2(h) of the current Collective Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Chef M. Kiceluk a regular assigned Dining Car Chef operating on Trains 1 and 2 between Winnipeg and Vancouver was scheduled to leave Winnipeg on June 24th, 1967, in his regular sequence of operation which required him to leave Winnipeg every eighth day.

Due to a shortage of qualified Chefs, he was called from layover for Train No. 1 leaving on June 23rd, twenty-four hours before his regular line assignment.

Following the trip mentioned, Chef Kiceluk was again due out in his regular line on July 2nd.

Due to the continuing shortage of qualified Chefs, M. Kiceluk was again called to fill another assignment on Train No. 1, forty-eight hours before due out in his regular line.

Kiceluk continued to be used in this sequence of operation which was not his regular line for six trips each of which worked forty-eight hours ahead of his regular line.

Still due to a shortage of Chefs, Kiceluk was called out on August 16th, seventy-two hours ahead of his regular line and twenty-four hours ahead of the line he had remained in for the previous six trips.

On August 23rd, Kiceluk was again called out on Train No. 1, twenty-four hours ahead of the assignment just completed and now ninety-six hours prior to reporting time in his own regular sequence of operation.

For the trip starting June 23rd, Kiceluk submitted a time ticket for nineteen hours at time and one-half for time worked during layover and another ticket for the trip which included the same nineteen hours.

The Company paid the nineteen hours at time and one-half separate and apart from the guarantee and deducted said nineteen hours from the trip time ticket.

For the trips starting June 30th, August 16th and August 23rd, Kiceluk submitted time slips in the manner stated above and on each occasion the Company deducted the time claimed separate and apart from the guarantee from the trip time ticket.

The Brotherhood contends that the Company is in violation of Article 2(h) of the Collective Agreement in respect of the manner in which it paid M. Kiceluk for the irregular trips which were other than his regular line in sequence of operation.

FOR THE EMPLOYEES:

(Sgd.) J. R. BROWNE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

T. P. James	– Manager, S.D., P.C. & News Dept., Montreal
J. W. Moffatt	– General Supt., S.D., P.C. & News Dept., Montreal

And on behalf of the Brotherhood:

J. R. Browne	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

This case involves the application of the second paragraph of Article 2(h) of the collective agreement in the situation described in the union's statement of issue. On June 23, the grievor was called from layover some twenty-four hours before his regular assignment. On the several other occasions referred to, the grievor, while on layover, was called out ahead of his regular assignment, for road service.

The second paragraph of article 2(h) deals expressly with this situation. That provision is as follows:

> 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.

Here, the grievor was called from layover for road service, and as thus entitled to be paid for the time worked during layover at one and one-half times the basic hourly rate, with a minimum of eight hours, and this payment is separate and apart from the quarterly guarantee. For the trip starting June 23, the grievor, as has been noted, was called while 24 hours of his layover remained, and he worked 19 of those hours. The company paid for these 19 hours at time and one-half, separate and apart from the quarterly guarantee, and it is the company's position that this payment satisfied the requirements of article 2(h). The Union, however, contends that the grievor was entitled not only to the nineteen hours at time and one-half, pursuant to article 2(h) but also to the same nineteen hours as a part of his regular trip payment. Such at least is the contention set out in the statement of issue. I am unable to find any support in the collective agreement for this contention. The time worked during the layover is paid for at overtime rates. There is no requirement that such time be paid for again, at regular rates as a part of the trip. In the absence of specific language to that effect, I cannot conclude that the agreement calls for a pyramiding of overtime. This matter, although arising in a different way, was dealt with in **case number 74**, and I agree with that decision.

Upon his return from the trip which started on June 23, the grievor was on layover, but was again called while on layover. Again, it is clear that he was entitled to be paid at time and one-half for the hours worked while on layover, as above. It appears that such payment was made, but no other. As I have indicated, this basis of payment was correct. There is a question, however as to the period of time during which the grievor should have been considered to be on layover. Article 2(h) it will be noted, provides that "if an employee 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". Upon his return from the June 23rd trip, the grievor's next regular trip would have gone out on July 2. His services were required, however, on another irregular trip leaving on June 30. In fact, he was not restored to his regular assignment for some time, but was called on a series of irregular trips. Article 2(h) contemplates that an attempt will be made to restore an employee to his regular assignment, but it is not denied that because of the requirements of the service, the grievor was required to work these irregular assignments. The layover time allowed him on the return from any trip was not calculated by reference to the next trip he would have taken on his regular assignment, but rather was the time applicable to the crew with which he arrived having regard to article 5 of the collective agreement, this would appear to be correct. When the grievor was called to work during such a layover period, when of course he was entitled to be paid for such work at the rate of time and one-half, as I have found.

There is some conflict as to whether the company complied with Article 7 of the collective agreement, which requires return of time tickets which are disallowed, and payment of time claimed where tickets are not paid within

60 days. There is a form used by the company to give notice of ticket discrepancies, but it seems that such form was not used in this case. The grievor (and others with similar claims) asserts that he did not receive notice in writing as to why his time was altered. It does appear, however, that the time slips submitted by the grievor were returned to him by the timekeeper, with the altered figures shown. In my view this complied with the requirements of article 7.

For the reasons set out above, it is my view that the company correctly applied article 2(h) to the circumstances in question. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR