CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 157

Heard at Montreal, Tuesday, June 10th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Concerning the interpretation, intent and application of Clause (e) of the Run-Through (Pooled) Caboose Agreement shown as Appendix 2 of the current Collective Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Subsequent to the Memorandum of Agreement covering Run-Through (Pooled) Cabooses being signed February 24th, 1967, several attempts were made to have suitable sleeping accommodations made available for seven Ottawa men who of necessity must lay over night at Montreal. To date, our request for suitable sleeping quarters, comparable to the accommodations defined and negotiated in the Run-Through (Pooled) Caboose Agreement as termed suitable, have been denied. The employees contend that the Company is ignoring their responsibility of providing suitable sleeping quarters for the seven Ottawa men as agreed to in Clause (e) of the Memorandum of Agreement.

FOR THE EMPLOYEES:

(SGD.) J. I. HARRIS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Ramage	– Manager Labour Relations, Montreal
C. E. Moore	– Supervisor Personnel & Labour Relations, Montreal

And on behalf of the Brotherhood:

J. I. Harris	– General Chairman, Montreal
D. Gaw	– Local Chairman, Ottawa

AWARD OF THE ARBITRATOR

Clause (E) of Appendix 2 of the collective agreement in effect between the parties provides as follows:

> **E.** Passenger trainmen will be provided with suitable sleeping quarters at away-from-home terminals convenient to passenger stations

The grievance is brought with respect to certain passenger trainmen required to stay overnight at Montreal, which is, for them, an away-from-home terminal. By clause (E) of Appendix 2 the company is required to provide these employees with "suitable sleeping quarters ... convenient to passenger stations". The company acknowledges this obligation.

The sleeping quarters at Montreal provided by the company for the passenger trainmen in question are located in the company's Windsor Station in Montreal. There is no objection to them, therefore, on the grounds of convenience to passenger stations. It is said, however (and, as will appear, the point is not really in dispute), that the quarters provided are not "suitable". The Union's brief sets out a number of ways in which the quarters are not suitable, including noise, fumes, disturbance and overcrowding. It is not necessary to describe the sleeping quarters in any detail because the company acknowledges that the quarters provided, in their present condition, are not suitable. The real issue in dispute is as to the nature of the award which I should make in these circumstances.

Appendix 2 of the collective agreement contains, *inter alia*, specific provisions as to the type of accommodation to be provided for certain other groups of employees. Thus, the amenities and furnishings of cabooses in run-through (pooled) service are set out in detail in clause (F) and those of certain rest-houses are provided for in clause (B). Clause (D) provides that in some cases the company may elect to provide suitable sleeping quarters in a hotel or motel.

While there are no criteria in clause (E) for establishing what would constitute "suitable" sleeping quarters, the provisions relating to the facilities to which other groups of employees are entitled may be considered as indicating in a general way the standard of accommodation which might be considered "suitable". Having regard to this general standard, it must be said that the accommodation provided for the passenger trainmen at Montreal is not suitable. It must be emphasized that the accommodation to be provided these employees is simply that required by clause (E). The other provisions of Appendix 2 are not in themselves binding with respect to these employees, and they are only referred to as an aid to interpretation.

Clearly it is up to the company to determine what sort of accommodation it will provide A grievance may be brought if the accommodation is not considered suitable. In the instant case the accommodation provided is not in fact suitable, and the grievance must succeed. Generally speaking, however, it is not for the arbitrator to direct the company to make specific accommodation available, or to direct that accommodation be provided at a specific hotel or motel The company's major contention is that clause (E) does not require it to lodge passenger trainmen at a hotel. This contention is as a general matter, correct. "Suitable" sleeping quarters may well be provided elsewhere than in a hotel or motel. It was said by the Company to have been the Union's view that no amount of work could render suitable the quarters now provided at the Windsor Station. Whether or not this was really the Union's view of the matter, one would suppose that the provision of appropriate facilities somewhere in the Windsor Station would not be beyond the capacities of the company's architects and engineers. If the Union does not wish to participate in making suggestions for the renovation of the existing quarters (and on the evidence they would seem to require substantial renovation) then the Company must nevertheless live up to its obligation under the collective agreement to provide suitable quarters, whether by renovating the present ones, building new ones, or providing some other sort of accommodation. If the quarters provided by the Company are not suitable, then the Company is in violation of the collective agreement.

In the instant case the quarters provided are not suitable and the Company is in violation of the agreement. While it is not for an arbitrator under this collective agreement to direct the Company to provide specific accommodation, it is his obligation to grant the appropriate relief to the employees who have suffered by reason of a particular breach of the agreement. I have found that in fact the sleeping quarters now provided for passenger trainmen at the Windsor Station are not suitable. The employees, accordingly, cannot be expected to accept such quarters as constituting those to which they are entitled. While the remedy in situations such as this has not been considered in any labour arbitration cases of which I am aware, there are numerous appropriate analogies in the general law, particularly in the law of landlord and tenant, and in municipal law. Where a party is in default of an obligation to provide certain facilities or to make repairs, the party entitled to the provision of those facilities or

repairs may, in a proper case, arrange for those facilities or repairs to be done and recover the expense from the defaulting party, perhaps by a deduction from rent due, or as an addition to taxes payable.

In the instant case, the employer being in default of its obligation, the appropriate remedy surely is for the employee to provide proper accommodation for himself, at the expense of the employer.

In all of the circumstances of this case, it is my conclusion that the following award is the proper one to be made:

1) It is declared that the Company has not provided suitable sleeping quarters for the employees concerned; and

2) The Company is directed to provide such quarters forthwith, whether on its premises or elsewhere; and

3) In default of compliance with the foregoing by the Company, or pending such compliance, the employees concerned may seek suitable accommodation of their own, the expense of which must be borne by the Company.

(signed) J. F. W. WEATHERILL
ARBITRATOR