CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 190

Heard at Montreal, Wednesday, November 12th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

A claim by Porter W. Reige for payment for a round trip between Vancouver and Winnipeg when the operation of sleeping cars between these points to which he was assigned was suspended on January 31, 1969.

JOINT STATEMENT 0F ISSUE:

Due to inclement weather conditions it was necessary to suspend the operation of line sleepers 229 and 129 between Vancouver and Winnipeg on train Nos. 2 and 1 ex Vancouver on January 31, 1969. Porter Reige who was assigned to this operation out of Vancouver on that day was advised according Mr. Reige's guarantee was protected throughout the one cycle of operation his assignment was suspended.

The Brotherhood claims the Company violated Articles 13.1, 13.2, 13.3 and 13.6 of Agreement 5 8 and that Mr. Reige should be compensated for hours he would have worked had his assignment operated Vancouver to Winnipeg and return.

The Company contends these articles were not violated and declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
EXECUTIVE VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

O. W. McNamara	– System Labour Relations Officer, Montreal
R. Arnold	– Customer & Catering Operations Officer, Montreal
L. A. Johnson	– Superintendent SD&PC Services, Vancouver
P. A. McDiarmid	– System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice President, Montreal
R. Henham	– Regional Vice-President, Vancouver
A. Cerilli	– Representative, Winnipeg
F. C. Johnston	– Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The articles referred to in the joint statement of issue are as follows:

13.1 When staffs are reduced, senior employees with sufficient ability to perform the work will be retained.

13.2 In instances of staff reduction, six calendar days advance notice will be given to regularly assigned employees whose positions are to be abolished.

13.3 Employees whose positions are abolished or who are displaced may exercise their seniority up to cut-off time displacing junior employees from any regular assignment or elect to operate on the spare board providing they have the required qualifications.

13.6 Assigned employees whose assignments are cancelled due to disrupted train service will be permitted to exercise their seniority as provided for in Article 13.3.

This is not a case to which the provisions of article 13.1, 13.2 or 13.3 apply. There was no "reduction in staff". Porter Reige remained a member of the staff, and received his regular salary payment (as described below) for the period in question. The question of seniority, under article 13.1, or of notice, under article 13.2, does not arise. Further, his position was not "abolished". The company has referred to what happened as a "temporary suspension" of the assignment, and while the union correctly points out that the term "temporary suspension" does not appear in the agreement, this term would seem to indicate the appropriate contrast to the "abolition" contemplated by article 13.3.

It seems clear, however, that article 13.6 does apply in these circumstances. Porter Reige would have been entitled to exercise his seniority as under article 13.3. The company states that he made no request to exercise his seniority in this way, and accordingly argues that it is under no liability in respect of what he might have earned had he done so. It appears from the parties' statements that enquiry was made as to the exercise of seniority by Porter Reige, but that he was advised that his "guarantee would be protected", and that he did not press the matter further. The grievance in this case is not based on a claim of denial of the right to exercise seniority, but is rather a claim for payment for a round trip, missed as the result of the cancellation of the assignment. It is true of course that Porter Reige's earnings were substantially less as a result of the cancellation than they would otherwise have been. If Porter Reige was under the impression that the "protection" of his "guarantee" meant that he would be paid just as if he had done the work, then he was under a misapprehension for which there is no justification in the collective agreement.

Payment was made to Porter Reige pursuant to article 4 of the collective agreement. Under that article provision is made for payment of a basic salary equivalent to forty hours per week. There is further provision for calculation of overtime payments based on a twelve-week averaging period. In the period including the time when his assignment was cancelled, Porter Reige continued to receive his regular four-week payment equivalent to 160 hours, although during this time he was credited with having worked only 73.67 hours. For the period in question, he was paid for 86.33 hours on account of guarantee. In this sense, his guarantee was protected.

There was nevertheless, as I have indicated, a loss of earnings to Porter Reige, because he did not gain credit for working hours, thus losing the opportunity for increased earnings at overtime rates over the twelve-week averaging period. This, however, is not the subject of guarantee. His guarantee of the basic payment was protected, in the sense that he continued to receive that payment in respect of the period during which his assignment was cancelled. In my view, that was the proper payment under the agreement, and there has been no violation of it.

The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR