

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 198

Heard at Montreal, Tuesday, January 13th, 1970

Concerning

CANADIAN NATIONAL RAILWAYS

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Claims submitted by the Brotherhood on behalf of Mr. A.A. Carse and certain other employees who were required to perform relief work on train Nos. 9 and 10 between Jasper and Prince Rupert for payment of held time (8 hours' pay in each 24-hour period) between trips at Jasper.

JOINT STATEMENT OF ISSUE:

There is no spare board maintained at Jasper. When spare employees are required to fill positions on trains 9 and 10, dining car employees are deadheaded from Vancouver while sleeping car Conductors and Porters are deadheaded from Edmonton.

The Brotherhood contends that spare employees who are required to make more than one trip on the Jasper-Prince Rupert line are entitled to payment for held time between such trips because it is claimed payments of this nature had been made in the past.

The Company declined payment of the claims on grounds that there is no provision in the Agreement requiring payment of held time between trips to employees performing spare work out of Jasper.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

O. W. McNamara	–System Labour Relations Officer, Montreal
R. J. Wilson	–Regional Labour Relations Officer, Montreal
E. T. Catrano	–General Superintendent SD&PC Services, Edmonton
L. A. Johnson	–Superintendent SD&PC Services, Vancouver
R. Arnold	–Customer & Catering Operations Officer, Montreal
F. R. Wildy	– Passenger Sales Manager, Edmonton

And on behalf of the Brotherhood:

J. A. Pelletier	–Executive Vice President, Montreal
R. Henham	–Regional Vice President, Vancouver
A. Cerilli	–Representative, Winnipeg
D. A. Dalby	– Local Chairman, Vancouver
J. B. Stevenson	– Witness

AWARD OF THE ARBITRATOR

This is a claim by certain dining car employees assigned from the spare board at Vancouver to perform relief work. In order to carry out their assignments, they are deadheaded to Jasper, and are deadheaded back to Vancouver when the assignment is completed. While relieving regularly assigned employees, they are governed by the O.R.S. (Operation of Run Statement) of the run, as provided by Article 4.11 of the collective agreement. It would seem (although this question does not arise here), that they would be entitled to payment of held time in the appropriate circumstances if held away from home or at a point en route. For this purpose, however, the "home terminal" must mean the home terminal of the assignment, that is, Jasper, and not their individual home, Vancouver. The claims made here are in respect of time spent at Jasper, between trips, and these claims arise because the "assignments" to which the grievors are called may consist of several trips.

The operation of the spare board is governed by article 7 of the collective agreement, of which article 7.2 is here material:

7.2 A spare board classification list will have a maximum of five classifications as agreed upon between the designated Company officer and the Local Chairman, and will list names of senior unassigned employees (to operate on the "first in; first out" principle) who will be required to protect the following services:

- (i) Newly created temporary positions and temporary vacancies in regularly assigned positions considered to be of less than 50 days' duration on a trip by trip basis.
- (ii) Standby or terminal duty (except as specified in Article 4.27). Standby employees required for road service after the cut-off time will be assigned in their spare board order.
- (iii) Relief for annual vacations, including additional layover continuous therewith.
- (iv) Additional monthly layover in assigned positions at home terminal (if such monthly layover has not been made part of an assignment).
- (v) Extra road service, including augmenting of crews.
- (vi) Such other work as agreed upon between the designated officer of the Company and the Local Chairman.
- (vii) Spare employees temporarily performing duties at an away-from-home terminal shall not be displaced if such temporary assignment is for / days or less.

The number of employees on the spare board shall be regulated, as agreed upon between the Company and the Local Chairman, in order to provide as closely as possible, the basic hours in a four-week period.

Normally, such relief work as the grievors performed here, if it were work on assignments out of Vancouver, would be performed on a trip by trip basis, pursuant to article 7.2 (i). The employee would be called from the spare board in his turn, go out and back on his trip, and be returned to the spare board to await his next call, in order. Here, however, it is said that the service is performed pursuant to article 7.2 (vi). Certainly there is an agreement between the parties that dining car employees on the spare board at Vancouver are subject to call for trips out of Jasper. The company contends that spare board employees need not be called on a trip by trip basis for this work, but may be called for an "assignment" consisting of several trips. The union contends that the agreement permitting the company to call employees from the Vancouver spare board to perform several trips out of Jasper on the one call was conditional on the employees being paid held time between trips at Jasper.

The company has paid such claims on some occasions in the past. It has indicated its willingness to pay held time at Jasper where a spare board employee is held over after the completion of his "assigned" number of trips. Where it has paid held time between trips on the original "assignment", however, it now contends that such payments have been in error. If this is the case, then the company cannot be required to perpetuate the error.

On all of the material and evidence before me in this case, I am unable to find that the company in fact entered into an agreement to pay held time in the circumstances in issue here. In this, I do not in any way reflect on the sincerity or good faith of the union officers who gave evidence as to the nature of the agreement to use the

Vancouver spare board for purposes of relief assignments from Jasper. It is simply that on the evidence, I cannot make a finding relating to the terms of such agreement, other than that the Vancouver spare board was to be used for this purpose. By the same token, and again having regard to all of the evidence, I cannot find that the union had agreed that employees could properly be called from Vancouver on other than a trip by trip basis. While it may be that employees are called to work out of Jasper pursuant to article 7.2 (vi) rather than article 7.2 (i), and while it is true that article 7.2 (vi) makes no reference to work on a trip by trip basis, it is nevertheless clear that the provisions of article 7 do not contemplate spare board employees being required to be held over for a number of days, away from the terminal at which the spare board is operated, without payment and unable to be called for other work. In this instance it had been the company's belief (and again, I do not doubt the good faith of its officers) that the union had agreed to such an arrangement. Once again, it can only be said that the evidence does not establish that the arrangement contained such terms as those desired by the company. Obviously, where employees are to be deadheaded from Vancouver to Jasper and return, it would be desirable that they perform a sufficient amount of work out of Jasper to make the effort worthwhile. Some arrangement, worked out between the parties could no doubt be made to accommodate both interests within the framework of the collective agreement. The material before me only shows that the parties actually agreed to use the Vancouver spare board as a source of relief employees on Jasper-Prince Rupert runs. Each of the parties firmly believes that the agreement went beyond that, but each party's view of the matter is denied by the other. The evidence fails to show any clearly defined, explicit consensus, whether in writing or otherwise.

The instant case involves claims for time "held" at Jasper. For the reasons which have been stated, there is no basis for such a claim in the absence of a particular agreement which would support it. There being no such agreement provided, the claims cannot succeed. The matter of requiring spare board employees to accept "assignments" on a multi-trip basis is not now before me for determination; it was, however, referred to at the hearing, and likewise appears to require a specific agreement between the parties. It may be noted that no such agreement appears, on the material before me.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR