

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 237

Heard at St. Boniface, Manitoba, September 11th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Time claims of thirty-one passenger crews, Edmonton, Alberta, December 1968 and January 1969.

JOINT STATEMENT OF ISSUE:

Conductor J.H. MacKay, Trainmen J.H. Byers and S. Robin and Baggage man R.J. Zurbrigg, were assigned to operate regular passenger trains No 5 and No. 6 between Edmonton, Alta. and Watrous, Sask. with Edmonton designated as their home terminal. On December 8, 1968 this crew was instructed to operate their assigned train No. 6, which was running late, from Edmonton to Biggar, Sask. only, in order to enable them to operate their assigned train No. 5 back to Edmonton. For the trip on train No. 6, from 1655 hours, the time they reported for duty at Edmonton, until 2215 hours, the time they went off duty at Biggar, they submitted a time return claiming 284 miles at passenger rates of pay.

On December 9, 1968, they were ordered, at Biggar, for their assigned train No. 5, reporting for duty at 0445 hours and went off duty at Edmonton at 0955 hours. For the trip on train No. 5, the crew submitted a time return claiming 405 miles at passenger rates of pay, which included payment for all time off duty at Biggar, i.e. from 2215 hours December 8, until 0445 hours December 9, amounting to 130 miles. The Company paid the claims for 284 miles as submitted for December 8, 1968. However, the claims for December 9, 1968 were reduced by 130 miles, the payment claimed for time off duty at Biggar, and the Company paid for 275 miles at passenger rates.

Subsequently, each employee submitted a claim for payment of the 30 miles at passenger rates of pay, being the difference between the miles claimed and the miles paid for December 9. Payment of these claims was declined by the Company. The Union contends that in refusing to make payment, the Company violated Article 5, Rule 9, Clause (a) of Agreement 4.17 and Article 5, Rule 12 clause (a) of Agreement 4.1.

Similar claims, in differing amounts, were submitted by various assigned passenger crews on thirty other occasions during December 1968 and January 1969, which claims were also declined by the Company.

FOR THE EMPLOYEES:

(SGD.) J. S. CORBETT
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. J. DelTorto – System Labour Relations Officer, Montreal
J. R. Gilman – Labour Relations Assistant, Montreal
J. E. Munsey – Superintendent Transportation, Edmonton

And on behalf of the Brotherhood:

J. S. Corbett – General Chairman, Winnipeg
R. C. Murdoch – Secretary, General Committee, Winnipeg

AWARD OF THE ARBITRATOR

The grievors, who would normally have operated from Edmonton to Watrous on train No. 6, and from Watrous to Edmonton on train No. 5, did, on the occasion in question, operate those trains only from Edmonton to Biggar and from Biggar to Edmonton. As a result, they did not make the mileage they would have had their regular assignments been performed in full.

The rules alleged to have been violated are the same in each case. The material part of the provisions said to apply is as follows.

Conductors (or trainmen) switching or delayed at terminals or turnaround points will be paid for actual times so occupied at through freight rates.

Had the grievors proceeded to Watrous they would not, in the normal course, have been entitled to payment under this provision for the time between their arrival on train No. 6 and their departure on train No. 5, unless of course, they were actually held on duty at the terminal. In the instant case, however, they were on their regular assignment until they reached Biggar, and were there taken off the assignment (according to instructions previously issued) and awaited their return trip. There is no question of switching, the issue being simply whether the grievors were "delayed" at a terminal or turnaround point, so as to be entitled to payment pursuant to the article in question.

The grievors, not unnaturally, seek to make up some part of the loss suffered as a result of the cutting short of the trips they would normally have made on the days in question. It appears from the joint statement that they would have been unable to complete their regular assignment on train No. 5 in time to carry out their regular assignment on train No. 6, because train No. 6 was running late. It was in order to operate on train No. 5 back to Edmonton that they left train No. 6 at Biggar. There is no suggestion that they were guaranteed the mileage of their regular assignment rather, it is argued that the grievors were "delayed" at Biggar from the time of their arrival there on train No. 6 until their departure on train No. 5. They did go "off duty" at Biggar, as the joint statement indicates, but of course the real question is whether they were properly off duty, or whether they should be considered to have been "delayed" there within the meaning of the articles in question.

As has been stated, they would not be considered "delayed" while waiting at Watrous for their return trip in the normal course. Are they to be considered "delayed" at Biggar, when their assignment on train No. 6 was terminated there?

Apart from the foregoing, there arises as well the question whether the articles referred to apply at all with respect to persons in passenger service as the grievors were. Article 5 sets out rates and conditions to apply to "all classes of service unless otherwise specified in this schedule". There is, in the schedule, specific provision for payment to trainmen in passenger service, set out in article 1, clause (d) (clause (c) in the conductors' agreement). From an examination of that article it would appear that the grounds of entitlement under the two provisions are similar, although the rates of payment may differ. Under article 5, it may be noted, payment, where called for, is made at "through freight rates". There being specific provision for trainmen in passenger service in article 1, that would appear to be the governing provision in this case.

Assuming, however, for purposes of argument that article 5 is applicable in the grievors' case, it is my view that they were not "delayed" at Biggar within the meaning of the article. They were not in fact on duty, and they were not entitled to be on duty. They were not awaiting any event that would allow them to complete their assignment, they had completed their shortened assignment for that day. This entitlement in these circumstances was no different than it would have been had they gone on to Watrous, their assignment was completed, and they were properly released from duty.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR