

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 368

Heard at Montreal, Tuesday, July 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Brakeman R.J. Hyde, Rexdale, for \$210.29 additional pay.

JOINT STATEMENT OF ISSUE:

On Friday, December 5, 1969, Brakeman R.J. Hyde, who was regularly assigned to a yard service assignment at Rexdale, Ontario, was stopped by the Metropolitan Toronto Police while driving his car home from work. In the car the police found a considerable amount of merchandise from various firms which the Company serviced at Rexdale. Mr. Hyde was unable to explain the presence of the merchandise to the satisfaction of the police and was apprehended by them. The Company held Brakeman Hyde off work for an investigation in the matter from December 8, 1969 to February 3, 1970 inclusive. He was not assessed discipline with respect to the incident.

The employee submitted a time return claiming a day's pay for each 24 hours held out of service. The Company allowed payment on the basis of the actual time lost pursuant to Article 24 of Agreement 4.16.

The claimant subsequently submitted a claim for an additional \$210.29, representing the difference between the time claimed by him and the time paid by the Company. The claim was declined by the Company and the Union contends that in refusing to make payment, the Company violated Article 154 of Agreement 4.16.

FOR THE EMPLOYEES:

(SGD.) G. R. ASHMAN
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
D. C. Fraleigh – System Labour Relations Officer, Montreal
E. B. Roach – Trainmaster, Toronto

And on behalf of the Union:

G. R. Ashman – General Chairman, Toronto
F. R. Oliver – Secretary General Committee, Toronto

AWARD OF THE ARBITRATOR

Article 154, relied on by the Union, is as follows:

154 No employee will be disciplined or dismissed until the charges against him have been investigated, the investigation to be presided over by the man's superior officers. He may, however, be held off for investigation not exceeding three days, and will be properly notified of the charges against him. He may select a fellow employee to appear with him at the investigation, and he and such fellow employee will have the right to hear all of the evidence submitted; and will be given an opportunity through the presiding officer to ask questions of witnesses whose evidence may have a bearing on his responsibility, questions and answers will be recorded. He will be furnished with a copy of his statement taken at the investigation. The employee will be advised in writing of the decision within fifteen days from the date investigation is completed except as otherwise mutually agreed. If not satisfied with the decision he will have the right to appeal within thirty days from the date he is notified thereof. On request, the General Chairman will be shown all evidence in the case. In case discipline or dismissal is found to be unjust, he will be exonerated, reinstated if dismissed, and paid a minimum day for each twenty-four hours for time held out of service at schedule rates for the class of service in which he was last employed. When employees are to be disciplined, the discipline will be put into effect within thirty days from the date investigation is held.

It is understood that the investigation will be held as quickly as possible, and the layover time will be used as far as practicable. Employees will not be held out of service pending rendering of decision except in cases of dismissable offences.

Had it not been for the presence in the collective agreement of Article 24, there might be merit in the view that Article 154 would apply not only in the case of an employee who was disciplined and whose discipline was found to be unjust, but also to the case of an employee who, like the grievor, loses earnings by reason of being held out of service pending what may be call a disciplinary investigation, even though no discipline is ultimately imposed.

The matter of compensation for loss of earnings in the case of an employee held for investigation but not subjected to discipline is, however expressly provided for in Article 24, the material portions of which are as follows:

Trainmen who, during their off duty time, are required to attend Company investigations or who are held off work by the Company for such investigations, and no responsibility is attached to them in connection with the matter under investigation (i.e. not subject to discipline), and trainmen who are held off work on Company business on order of the proper officer, will be paid as under:

(a) Trainmen in assigned service will be paid for actual time lost; when no time is lost pay will be allowed hour for hour for the first eight (8) hours in each twenty-four (24) hours so held (computed from time required to report or to deadhead) on the basis of one-eighth (1/8) of the daily rate applicable to the service in which usually engaged.

In providing for payment for actual time lost, Article 24 would appear to provide an appropriate remedy in the situations with which it deals. That is, it is the actual loss which is made up. If Article 154 were applied in the manner sought by the grievor, it would seem that the grievor's recovery would exceed the amount of his actual loss. It is not, however, necessary for me to deal here with the question of the application of Article 154 since, as I have said, Article 24 applies expressly to the situation. This explicit provision must govern the matter, having precedence over the more general provision of Article 154.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR