

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 463

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Union claims the Company violated Clause 2.14 of Wage Agreement No. 10.3 when Work Equipment Operator J. Whelan was not allowed pay for November 6th, 7th and 8th, 1973. The claim is for a total of 24 hours at straight time rates.

JOINT STATEMENT OF ISSUE:

Work Equipment Operator J. Whelan held a regular assignment in a gang which was working at Gamsby, Ontario. On completion of work November 1st, the employees were released for their rest days of November 2nd to 5th inclusive. The operators were to return to Gamsby on November 6th, load their machines on flat cars, and move to a new location. Mr. Whelan, who had been travelling by automobile to Capreol, missed a train to Gamsby, leaving Capreol at 0025, November 6th. He later missed a second train leaving at 0900, which was the last passenger train to Gamsby that day. The machines were loaded at Gamsby on November 6th and proceeded to Utterson, some 535 miles away, where they were ready to begin work on November 9th. For November 6th, 7th and 8th, Mr. Whelan was offered other work at Capreol, which he declined.

Mr. Whelan claimed that, pursuant to Clause 2.14, he should have been allowed 8 hours' pay for each of the three days in question. The Company declined the claim on the basis that Mr. Whelan was unavailable for service on those days.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) P. A. LEGROS (SGD.) G. H. BLOOMFIELD

SYSTEM FEDERATION GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

W. H. Barton – System Labour Relations Officer, Montreal

A. D. Andrew – System Labour Relations Officer, Montreal

J. T. LeCain – Regional Supervisor Work Equipment-Operations, Toronto

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa

L. Boland – General Chairman, London

G. D. Robertson – Vice President, Ottawa

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AWARD OF THE ARBITRATOR

Article 2.14 of the collective agreement is as follows:

2.14 Employees, while assigned to any job and available for service, shall be allowed the minimum number of hours which constitutes a day's work at pro rata rates, for which such number of hours worked may be required for each day so assigned, exclusive of rest days and holidays.

In the instant case the fact is that the grievor did not in fact report for duty at Gamsby on the day in question. He did report at Capreol, and even if that were considered as entitling him to the benefit of article 2.14, he then declined the work which was offered him there.

Apart from article 2.14, the Union contended at the hearing that the grievor would be entitled to payment pursuant to the Snow Storm Policy, which is now incorporated in the collective agreement. That policy provides for payment to employees who arrive late for their assignments, where the late arrival is directly attributable to weather conditions. In the instant case, the grievor did not arrive at his assignment, which was at Gamsby, at all.

Accordingly, there is no basis under the collective agreement for the payment of this claim, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR