CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 948

Heard at Montreal, Wednesday, May 12, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that employees on the R-3 Ballast Gang be paid five hours at straight time rates on June 10 and two hours at overtime rates on June 12, 1981.

JOINT STATEMENT OF ISSUE:

At 0800, June 9, 1981, the R-3 Ballast Gang commenced a movement from Balcarres, Saskatchewan to Lone Rock, Saskatchewan. The outfits arrived at Wilkie, Saskatchewan at 0030 and departed at 0530 June 10, arriving at Lone Rock at 1230.

The Union contends that the Company violated Section 11.2(b), Wage Agreement 17 when the employees were paid one hour straight time (0001-0030) (0530-0600) for travelling on June 10 instead of six hours straight time (0001-0600).

On June 12, the employees worked 0700 to 1330 for which they were paid eight hours pay at straight time rates.

The Union contends that in stopping work at 1330 on June 12 the Company violated Sections 2.1 and 8.7.

The Union contends that the employees on R-3 Ballast Gang be paid an additional five hours at the regular rate of pay for travelling June 10, 1981 and two hours at the overtime rate of pay for June 12, 1991.

The Company denies the Union's contentions.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) R. J. SHEPP
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

F. B. Reynolds	– Supervisor, Labour Relations, Winnipeg
R. E. Petley	– Assistant Regional Engineer, Winnipeg
I. J. Waddell	– Labour Relations Officer, Montreal

And on behalf of the Union:

F. L. Stoppler	– Vice-President, Ottawa
A. Passaretti	– Vice-President, Ottawa
H. J. Thiessen	– System Federation General Chairman, Ottawa
R. Wyrostok	– Federation General Chairman, Edmonton
E. J. Smith	– General Chairman, London
A. W. Olson	– General Chairman, Regina

AWARD OF THE ARBITRATOR

There are, in effect, two distinct claims raised by this grievance. One is for travel time, the other for overtime; the two are not related.

The claim for travel time is in respect of the period from 0030 to 0530 on June 10, 1981, when the grievors, en route from Balcarres to Lone Rock, were tied up at Wilkie. The matter of payment for travel is dealt with in Article 11 of the Collective Agreement, and reference may particularly be made to Articles 11.1, 11.2 and 11.3. Those Articles are as follows:

> **11.1** Employees when detained for conveyance and while travelling on passenger trains on orders of the Railway to and from work away from their regular sections or headquarters after regular hours will be paid at the straight time rate for all time involved, except that they will not be paid between the hours of 10:00 p.m. and 6:00 a.m. when passenger sleeping car accommodation is provided for them.
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> **11.2** Employees will be paid for time travelling in boarding and sleeping cars, on orders of the Railway, under the following conditions only:
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> **(a)** during regular working hours, or
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> **(b)** between 12:01 a.m. and 6:00 a.m. provided the employees concerned have to work that day, or
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> **(c)** between 6:00 a.m. and 10:00 p.m. on a regularly assigned rest day or on a general holiday.
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> Payment under the foregoing conditions shall be at straight time.
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> **11.3** When practical to do so, boarding and sleeping cars shall be moved at times other than between 11:00 p.m. and 6:00 a.m.

Article 11.1 does not apply to this case because the men were not travelling on passenger trains. If they had been, they would have been entitled to payment for "all time involved", except that they could not be paid between the hours of 10:00 p.m. and 6:00 a.m. if passenger sleeping car accommodation was provided.

The grievors travelled in boarding cars, and it appears they were properly paid under Article 11.2(a). It does not appear that Article 11.2(c) applied in this case. It is Article 11.2(b) which is in issue. Here, the time for which the claim is made fell between 12:01 a.m. and 6:00 a.m., and it appears the grievors did have to work on that day. Thus, they were entitled to be paid "for time travelling" during that period. It is to be noted that Article 11.3 provides that, where it is practical, boarding cars are to be moved at times other than between 11:00 p.m. and 6:00 a.m.

Were the grievors "travelling", within the meaning of Article 11 during the period when their boarding cars were tied up at Wilkie on June 10? The Company does not, of course, contend that "travel" is synonymous with being in motion from one point to another. It is not suggested that persons in a stationary train on a siding, waiting for another train to clear, are not "travelling". It is argued, however, that where boarding cars are in fact tied up, in compliance with Article 11.3 (now apparently Article 11.5), then employees are not "travelling" within the meaning of Article 11, even although they are en route from one point to another, and may be said to be in the course of travel, in the broad sense.

In my view, Article 11 sets out a consistent and reasonable scheme of payment for the time of employees travelling on orders of the Railway. It is important to note that employees are not paid on a twenty-four hour basis, and not paid for the elapsed time between the points of departure and arrival. It may be noted that employees travelling in boarding cars are paid in respect of a longer period than those for whom passenger sleeping car accommodation is provided. In the case of boarding cars, it is contemplated that, where practical, they will not be moved during the late night or early morning. And it is only where – as here – employees have to work on the same day that employees would be paid, even they were, on any definition, "travelling" during the night. If, finally, the Company were required to pay employees during this period of the night when they were tied up (that is, if it had to pay them in any event, since it would certainly have to pay them if they were "travelling"), then it may well not have been practical to tie up the cars for the night, and Article 11.3 would be deprived of its clearly intended effect.

It is said that the Company's application of these provision is in line with past practice. The term "travelling" is one with respect to whose interpretation evidence of past practice would be relevant. There is no evidence before me on that, however, and I do not decide the matter on that point.

For the foregoing reasons, it is my conclusion that the grievors were not "travelling" within the meaning of Article 11 at the times in question, and the claim must be dismissed.

As to the claim for overtime on June 12, the employees were at work during a period of six and one-half hours, and were paid for eight hours. Article 2.1 provides that eight consecutive hours, exclusive of a meal period, constitutes a day's work. There was no violation of that in this case. It may be remarked as well that Article 2.2 provides that regular day shifts shall start at or between 6:00 a.m. and 8:00 a.m. In the instant case, the grievors' assigned starting time was 8:00 a.m. They in fact started at 7:00 a.m., one hour early, and worked through their lunch period, which was scheduled from 12:00 to 13:00 hours. Their work stopped at 13:30.

The claim here is not that the Company violated the Collective Agreement in scheduling work as it did (it would appear from Article 2 that it did not), but rather that overtime should be paid. Article 8.1 provides for payment of overtime "when employees are required to work in excess of eight hours per day". That is not, of course, this case, where employees worked less than eight hours, but were nevertheless paid for eight hours. The change in starting time, and the fact of working through the regular lunch hour did not, as such, necessarily involve overtime.

Article 8.7, on which the Union relies, provides simply that employees are not to be required to suspend work in regular working hours to equalize overtime. Here, the only suspension of work was that work ceased early, and after less than eight hours. There was no overtime within the meaning of Article 8, and what occurred did not "equalize" anything, or reduce in any way the payment employees might otherwise have received.

There was, again, no violation of the Collective Agreement, and the claim cannot succeed.

For the foregoing reasons, the grievance must be dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR