

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1051

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor F. Denarde and Crew, Toronto, Ontario, on February 11, 1982 for 220 passenger miles.

JOINT STATEMENT OF ISSUE:

Conductor Denarde and Crew were regularly assigned to VIA passenger trains 75-80 between Toronto and Windsor. Train No. 75 of 11 February 1982 was operating about 2 hours and 30 minutes late arriving London. This delay was due to No. 75 waiting in Toronto for connections from Train 61 and being subsequently rerouted via the Weston – Halton Subdivisions because of a derailment on the Oakville Subdivision. Train No. 75 was terminated at London, Ontario. Train No. 80 then originated at London and operated to its destination by Conductor Denarde and Crew.

The Union contends that Article 70.2 (27.2) of Agreement 4.16 was violated and Conductor Denarde and Crew should be compensated 220 passenger miles for loss of earnings.

It is the Company's position that Article 70.2 was not violated and Conductor Denarde and Crew were compensated in straight- away service.

The Company has declined payment.

FOR THE UNION:

(SGD.) R. A. BENNETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

H. J. Koberinski – Manager Labour Relations, Montreal
G. C. Blundell – System Labour Relations Officer, Montreal
J. A. Sebesta – Coordinator – Special Projects, Montreal

And on behalf of the Union:

T. G. Hodges – Secretary, GCA, Toronto
J. M. Hone – Vice General Chairman, Toronto
R. A. Bennett – General Chairman, Toronto
G. Scarrow – General Chairman, Toronto
R. J. Proulx – General Chairman, Quebec

AWARD OF THE ARBITRATOR

The Article in question provides as follows:

Regularly assigned trainmen will, when available for service, make their regular assigned trip or run notwithstanding the trains may be late or running ahead of time except as otherwise provided in this Article and in Article 25.

This is a provision (now, in somewhat different form, Article 70.2), dealing with the running of assigned crews. In providing that regularly assigned trainmen (and the grievors were regularly assigned) will "make their regular assigned trip" it gives them a right to work (in preference, for example, to other employees), and it gives them this right (subject to exceptions not here material) notwithstanding that the trains may be late or running ahead of time.

The Article is not a guarantee that the entire anticipated assignment will in fact be worked, regardless of circumstances, nor is it a guarantee of anticipated earnings. There are other guarantee provisions in the collective agreement. By the same token, it may be added, the article does not somehow oblige employees to carry out their assignment, regardless of circumstances, although the interpretation advanced by the Union would imply that result.

The grievors went out on their regular trip. Circumstances required that the routing and mileage be changed on that day. This affected the work the grievors did, and the payment they received. The collective agreement contemplates that there may be changes in circumstances, and the general guarantee provisions provide protection in that respect.

The article in question protects an employee's assignment but does not guarantee his anticipated earnings. The article was not violated in this case. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR