

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1382

Heard at Montreal, Tuesday, July 9, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor J. W. Russell and Trainman R. J. Folk for 50 miles account run-around by Conductor D. Hodgson and crew at Moose Jaw, Saskatchewan, August 23, 1984.

JOINT STATEMENT OF ISSUE:

Unassigned crews at Moose Jaw operate on a first-in first-out basis calculated by their time of arrival at the terminal in accordance with the provisions of Article 14, Clause (a) which reads in part as follows:

Unassigned crews in freight service and spare men will run first in first out of terminals.

If crews are run-around by a following crew or crews, 50 miles will be allowed for each run-around in accordance with the provisions of Article 14, Clause (b) which reads as follows:

Except as otherwise provided, a trainman or crew standing first out when run-around will be paid 50 miles for each run-around and continue to stand first out.

In the instant case, Conductor Russell arrived at Moose Jaw at 1255 and was off duty at 1350. His time of arrival would establish his turn out. Conductor Hodgson and crew arrived at Moose Jaw at 1350 and off duty at 1450 and would stand behind Conductor Russell and crew.

Conductor Hodgson made an error entering the time on the train register when booking his arrival resulting in his crew being placed ahead of Conductor Russell's crew. The result of this error was that he was called out ahead of Conductor Russell's crew creating a run-around.

The Union contends that Conductor Russell and crew were run-around through no fault of their own and cannot be denied their rights under the Collective Agreement because of the actions of a fellow employee. We request payment be allowed for 50 miles as specified in the Collective Agreement.

The Company contends that the run-around was as a result of the actions of a fellow employee and, therefore, the Company has no responsibility. They have denied the claim.

FOR THE UNION:

(SGD.) J. H. MCLEOD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. CHAMPION
FOR: GENERAL MANAGER

There appeared on behalf of the Company:

J. D. Champion – Supervisor, Labour Relations, Winnipeg
R. E. Noseworthy – Assistant Supervisor Labour Relations, Winnipeg
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Union:

J. H. McLeod – General Chairman, Calgary
P. P. Burke – Vice-President, Calgary

AWARD OF THE ARBITRATOR

In this case the parties do not dispute that Conductor J. W. Russell and Trainman R. J. Folk were "run-around" with respect to a train run that ought to have been assigned to them on the basis of "the first in first out" principle contained in Article 14 (a) of the collective agreement:

(a) Unassigned crews in freight services and spare men will run first in first out of terminals.

Moreover, the penalty provision payable to train crews who have been bypassed as such is governed by Article 14 (b):

(b) Except as otherwise provided, a trainman or crew standing first out when run-around will be paid 50 miles for each run-around and continue to stand first out.

In the circumstances described there is also no dispute that the sole reason the grievors were "run-around" is due to the mistake made by Conductor Hodgson in signing out his last train run on the register. That is to say, the mistake pertained to the erroneous "time out" that was recorded. Moreover, the company relied upon the designated times signed out by both Conductors Hodgson and Russell in applying the first in, first out principle to the next run. Accordingly, Conductor Hodgson and crew were assigned a run that ought to have been given Conductor Russell and crew. In that sense, the company, although in its adhering to the register in the application of Article 14 (a) nonetheless committed a breach of that provision.

The issue raised herein is not whether the company had violated "the first in first out" principle but whether it should be compelled to pay the penalty premium of 50 miles for the mistake that was caused by the grievors' colleagues in the bargaining unit.

In resolving this dispute I am satisfied that all parties have a vested interest in ensuring the accuracy and the completeness of information recorded in the register indicating a crews timekeeping. Both from the operational needs of the employer and the orderly, chronological assignment of runs to its train crews reliance is heavily placed by all parties on the information recorded on the register.

Accordingly, in my view, it is in the interests of all interested parties that the integrity of Article 14 (a) be maintained even though it may appear at the expense of an innocent victim, i.e., in this case the company. Unfortunately, the company did what it was supposed to do based on what later emerged as the erroneous information contained on the register. It nonetheless was in violation of the first in and first out principle and should be required to pay the "run-around" penalty.

The company's recourse, if any, was against Conductor Hodgson who could have been disciplined in an appropriate manner for the mistake that was responsible for the unfortunate and unintended violation.

To hold the company immune from payment of the penalty would not only result in a condonation of the violation of Article 14 (a), but would be placing the responsibility for the mistake on the wrong party, namely Conductor Russell. That is to say, the grievor, like the company, did everything he was required to do in order to receive the benefit of Article 14 (a). Conductor Russell signed the register in an appropriate and correct manner. He was entitled to take the run that was erroneously assigned to Conductor Hodgson. Accordingly, he and his crew were thereby entitled to the penalty premium of 50 miles.

The company's only assurance that it will not in future be made the victim of its employees' mistake is to have taken the necessary steps to make certain that the mistake is not repeated. In this manner both the integrity of Article 14 (a) is preserved and the appropriate penalty is directed to the right party for the infraction that was committed.

The grievance accordingly succeeds and I shall remain seized with respect to implementation.

(signed) DAVID H. KATES
ARBITRATOR