

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1600

Heard at Montreal, Thursday, December 11, 1986

Concerning

VIA RAIL CANADA INC.

AND

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

EX PARTE

DISPUTE:

Claim of 36 hours in favour of Mr. T. Mathewson, Spareboard Employee at Winnipeg, on account of disruption of service while filling a temporary vacancy in accordance with Article 7.12.

BROTHERHOOD'S STATEMENT OF ISSUE:

Due to a service disruption at Revelstoke, B.C., on May 7, 1985, Train 2 enroute to Winnipeg was returned to Vancouver, arriving at point on May 8, 1985. The above employee was assigned to this movement.

The Brotherhood claims that under the terms of Article 4.21 of Agreement No. 2, the employee was entitled to payment for all of the time involved.

The Company contends that the provisions of Article 4.21 do not apply in this circumstance, and the claim was denied.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH

NATIONAL VICE-PRESIDENT

There appeared on behalf of the Corporation:

C. O. White	– Labour Relations Officer, VIA Rail Canada Inc. Montreal
M. St-Jules	– Manager Labour Relations, VIA Rail Canada Inc. Montreal
J. Kish	– Officer, Personnel & Labour Relations, VIA Rail Canada Inc. Montreal
C. Gendron	– Coordinator, Human Resources, VIA Rail Canada Inc. Montreal

And on behalf of the Brotherhood:

A. Cerilli	– Regional Vice-President, Winnipeg
------------	-------------------------------------

AWARD OF THE ARBITRATOR

At all material times Mr. Mathewson was a spareboard employee in Winnipeg. It is common ground, however, that he was filling a temporary vacancy in the assignment of a regularly assigned employee. Article 7.12 and 4.21 are pertinent to this grievance. They provide as follows:

7.12 When filling a temporary vacancy in a regular assignment, spare employees shall be governed by conditions of the appropriate Operation of Run Statement and they shall revert to the bottom of the spare board on completion of the last trip.

4.21 Employees required to remain in service on their assignments beyond the hours or days shown on the O.R.S. due to late train arrivals at home or distant terminal, or if they are operated beyond the distant terminal of their run, deduction of rest shall be shown on the O.R.S..

4.21 EXAMPLE:

O.R.S.	Delayed Operation
Ex home terminal	1st day Ex home terminal
Arr distant terminal (R)	2nd day Arr distant terminal (R)
Ex distant terminal (R)	3rd day Ex distant terminal late
Arr home terminal	4th day Enroute (N.R.)
Layover	5th day Enroute (N.R.)
Ex home terminal	6th day Enroute (N.R.)
Arr distant terminal(R)	7th day Enroute (R)
Ex distant terminal (R)	8th day Arr home terminal (R)
(R) Rest deductible	
(N.R.) No rest deductible	

It is common ground that Mr. Mathewson was delayed by two days in his return to Winnipeg. That delay was entirely occasioned by the difficulties encountered at Revelstoke on the initial return trip from Vancouver, in consequence of which the grievor was delayed in Vancouver before being deadheaded back to Winnipeg by the Corporation.

In the Arbitrator's view the facts as presented fall within the principles elaborated in CROA 327. The events in that case are not substantially different from those in the case at hand, save that Mr. Mathewson is a spareboard employee. The Arbitrator accepts the argument of the Union that in these circumstances Article 7.12 of the Collective Agreement operates to give to the spareboard employee the full protection of Article 4.21 as it would apply to a regularly assigned employee. For the reasons expressed in **CROA 327**, those protections include entitlement to the wages claimed by the grievor. If the Corporation's position were accepted, namely that the grievor, as a spareboard employee, was to be compensated only for all time worked, including deadheading, a spareboard employee occupying a temporary vacancy in a regular assignment would be at a decided disadvantage as compared with a regularly assigned employee faced with a delay for circumstances beyond his control. In the Arbitrator's view that would be contrary to what is contemplated by Article 7.12 of the Collective Agreement.

For these reasons the grievance is allowed. Mr. Mathewson shall be compensated forthwith in respect of the claim of 36 hours. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

(sgd.) MICHEL G. PICHER
ARBITRATOR.