CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 188

Heard at Montreal, Wednesday, November 12th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

A claim submitted by the Brotherhood on behalf of Steward M. Enkurs and certain other employees who operated on dinette cars in extra service on Train No. 4 between Capreol and Toronto that rest was not deductible on those occasions when the train arrived late at Toronto during the period December 19, 1968 and January 4, 1969.

JOINT STATEMENT OF ISSUE:

To meet the demand for additional feeding facilities during the holiday season, a dinette car was operated on Train Nos. 3–4 between Toronto and Capreol on days required between December 19 and January 4. As these operations were on an "as required" basis and since it was known that the period of operation was for less than 30 days the positions were filled from the Spare Board at Toronto.

The Brotherhood claims that on those days when Train No. 4 operated late Article 4.21 of Agreement 5.8 applies in respect of the crew on the extra dinette and rest hours should not have been deducted.

The Company contends that these operations constituted special movements not covered by an Operation of Run Statement and employees operating thereon were properly compensated under Article 4.18 which includes a provision for the deduction of rest in accordance with the terms of Article 4.17.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
EXECUTIVE VICE PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

O. W. McNamara	– System Labour Relations Officer, Montreal
W. W. Fitz-Gerald	– Assistant Superintendent, SD&PC Services, Toronto
L. A. Johnson	– Superintendent SD&PC Services, Vancouver

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice President, Montreal
A. Cerilli	– Representative, Winnipeg
M. Bennett	– Local Chairman, Toronto
J. Huggins	– President Local 283, Toronto
F. C. Johnston	– Regional Vice President, Toronto
R. Henham	– Regional Vice-President, Vancouver

AWARD OF THE ARBITRATOR

The train in question operated from Toronto to Winnipeg and return. The dinette car on which the grievors worked was attached to the train out of Toronto as far as Capreol, and from Capreol to Toronto on a return trip. This crew, attached to the dinette car, would leave Toronto on one train at 1820 hours on each day the extra car was used. They were due to arrive at Capreol at 0205 hours the following morning. There, the car was separated from the train, and the crew rested. The car was attached to a returning train scheduled to leave Capreol at 1050 hours, and to arrive in Toronto at 1750 hours. Rest was deducted from elapsed time in respect of the time from the completion of their duties on the outbound trip. That is, there was a deduction for rest from 0100 hours (en route) and 0600 hours (at Capreol). There is no complaint as to this in this case. There was, however, a further deduction of rest from elapsed time in certain cases where the train arrived late on the return trip to Toronto. Where the train arrived on time, at 1750 hours, no deduction was made, nor would any have been proper. Where the train arrived as late as midnight, no deduction was made Where the train arrived after midnight, however, a deduction of up to six hours from elapsed time was made for rest. It is the latter deduction which is in issue here. No such deduction was made from the elapsed time of the dining car crew, who had come with the train all the way from Winnipeg to Toronto.

It was the company's position that article 4.18 of the collective agreement applied. That article, so far as it is material, is as follows:

> **4.18** Employees on a special movement not covered by an O.R.S. shall be paid from the time required to report for duty until released from duty, with deductions made for rest periods in accordance with Article 4.17.

The company, pursuant to this provision, deducted rest under article 4.17 (a).

> **4.17** Time deductions for rest periods will be as follows.
>
> **(a)** Meal Service Employees – a maximum of 8 hours per night between 2200 hours and 0600 hours.

Apparently the dinette crew were on duty until 1200 hours on the return trip (when it was late) so that the maximum rest deductible, if this provision applies, would be six hours.

The issue is whether article 4.18 does apply in this situation. The question is whether this was "a special movement not covered by an O.R.S." an "O.R.S." being an Operation of Run Statement.

It is the union's position that the operation of the extra dinette car was not such a "special movement", and that the deduction of rest should have been made pursuant to article 4.21, which provides as follows:

> **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 as shown on the O.R.S.

There would seem to be no doubt that the regular dining car crew on the trains in question were within the scope of article 4.21. Presumably, rest was deducted from their elapsed time in accordance with the "O.R.S." applicable to them. It is the company's contention that there was no O.R.S. affecting the work of the grievors.

An operation of Run Statement is defined in article 1.1 (c) as follows:

> **(c)** "Operation of Run Statement – (O.R.S.)" – means a statement covering assigned runs which will show …
>
> Home and Distant Terminal
> Frequency of Operation
> Number of Crews
> Additional Layover (if any)
> Cycle of Operation
> Effective Date
> Reporting Time
> Passenger Reception Time

Departure Time
Arrival Time
Release Time
Elapsed Time
Rest Hours Deductible
Net Hours Duty
Layover at Home and Distant Terminal.

Now the company did issue instructions relating to the operation of the extra dinette car to Capreol and return. These instructions provide much of the information which would be provided in an O.R.S., including a reference (incorrect, as it was discovered) to the deduction of rest. While these instructions would have much the same effect as the information set out in O.R.S., the important matter for purposes of this case is that an O.R.S. is a statement covering "assigned runs", and it may be noted as well that a "run" is defined as "a round trip covered by an Operation of Run Statement". Further a "regularly assigned" employee is, by article 1.1, "an employee working on an assignment covered by an Operation of Run Statement obtained by established bulletin procedure or by displacement". The assignment on which the grievors worked was not such an assignment: it is clear from the Joint statement of issue that these operations were properly performed by employees from the spare board the phrase "a special movement not covered by an O.R.S." does not refer simply to Special trains (although it would include them) but could include any assignment other than a regularly assigned run. Article 4.11 provides a significant qualification to this, since it provides that spare employees are to be governed by the O.R.S. of a run "for the period they are required to relieve regularly assigned employees". The grievors were spare employees, but they did not come within article 4.11. It is my conclusion, therefore, that this was a case in which article 4.18 applied, and accordingly rest was properly deducted pursuant to article 4.17 (a).

The union relied upon an award dated May 25, 1967, made in a somewhat similar case by Mr. H. Carl Goldenberg. In that case an employee was assigned on an extra dinette car on a train from Winnipeg to Toronto. He was considered not to be on a regular assignment, and he was accordingly not treated in the same way as the regular employees in the dining car. The train arrived late, and extra rest was deducted from his elapsed time on this account. The arbitrator came to the following conclusion:

> I find that Train 2–52, Winnipeg–Toronto, was a regular scheduled train with an extra car, and that, whether or not Mr. Heimlich and crew were "on an assignment" in the technical sense employed by the Company, there is no doubt that they were in fact assigned to the extra car, the dinette, in the same sense that the regular crew was assigned to the dining car. I do not find that, in the circumstances of the case, the terms of the agreement envisage discrimination in treatment between the two crews on the same train in respect of deductions for rest periods.

The circumstances of this case are different, in that the grievor did not in fact work the same run as the members of the diner crew who had come all the way from Winnipeg. Apart from this, however, the provisions of the collective agreement to which I have referred show that the collective agreement in question here does envisage a difference in treatment between the two groups of employees.

Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR