CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 205

Heard at Montreal, Tuesday, April 14th, 1970

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of W. Zabolctny, M. Kiceluk and W. Reitze for all working time included in a regular assigned trip on Trains No. 1–2 Winnipeg to Vancouver and return.

JOINT STATEMENT OF ISSUE:

During the period May 16th to September 21st, 1969, both dates inclusive, two dining cars were operated in Trains No. 1 and No. 2 between Winnipeg and Vancouver. The operation of the second dining car on these trains was discontinued effective September 22nd 1969. Messrs. W. Zabolotny, M. Kiceluk and W. Reitze, whose home terminal is Winnipeg, were the members of the crew on the second dining car which left Winnipeg enroute to Vancouver on September 21st. They arrived at Vancouver at 1100 hours on September 23rd. Because the operation of the second dining car on Trains No. 1 and No. 2 had been discontinued effective September 22nd, this crew was returned deadhead to its home terminal at Winnipeg on Train No. 2 which departed from Vancouver on September 23rd at 1930 hours. In respect of the deadhead movement from Vancouver to Winnipeg, the crew was paid under the provisions of Article 6 – Deadheading of the Collective Agreement. The crew claimed payment on the same basis they would have been paid had they been in working service from Vancouver to Winnipeg payment of which was declined by the Company.

The Union alleges that the Company in not allowing the same payment to this crew as would have been paid had they worked from Vancouver to Winnipeg, has violated the provisions of Article 2 (h) and Article 3 (d) of the Collective Agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. R. BROWNE	(SGD.) THOS. P. JAMES
GENERAL CHAIRMAN	CHIEF OF PASSENGER SERVICES

There appeared on behalf of the Company:
J. W. Moffatt – Manager Passenger Services, Montreal

And on behalf of the Brotherhood:
J. R. Browne – General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievors, whose home terminal is Winnipeg, had bid on the jobs on the second dining car on trains 1 and 2, the trip being from Winnipeg to Vancouver and return. It was known that the second dining car was a more or less seasonal operation, and that it might be cancelled if demand dropped. In any event, the assignment was cancelled effective September 22, 1969. This occurred while the grievors were enroute from Winnipeg to Vancouver. They arrived in Vancouver on September 23, and returned home deadhead the same day. There was no second dining car on the returning train No. 2, and the crew in the one dining car apparently included employees junior to the grievors.

In my view, the grievor's assignment was discontinued before it had been completed. On their return to Winnipeg they would have been able to exercise their seniority to bid on another run, but there was no provision of the collective agreement cited to allow them to exercise their seniority rights to displace others in mid-trip. It is the Union's prime contention that the grievors ought to have been allowed the full hours of their regular assignment, as though it had continued to completion. The grievors' complaint is understandable, but the question is whether the provisions of the collective agreement relied on support their claims.

Article 2 (h) is as follows.

> **2 (h)** An employee removed from regular assignment for special service will be paid for time worked in regular assignment and special assignment, and such payment will not be less than he would have earned in this regular assignment.

In the instant case the grievors were not removed from their regular assignment for special service. This article simply does not apply to the case.

Article 3 (d) is in part as follows..

> **3(d)** An employee held by Company order will be paid for time lost and actual reasonable expenses while away from home. If operating on a regular assigned run, total payment will not be less than employee would have earned on his regular assignment …

Again, the article simply does not apply to the instant case. The grievors were not held by company order. Their assignment was cancelled and they were deadheaded back to their home terminal. They were paid according to the provisions governing such cases.

The provisions of the collective agreement on which the Union relies deal precisely with particular types of situations. The circumstances of the instant case do not fall within those situations, and the articles referred to do not entitle the grievors to the relief sought here. Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR