CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 653

Heard at Montreal, Tuesday, February 14, 1978

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Circular 106 which the Company used to change articles in the collective agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Circular 106 which the Company used to change article 4.01(b) and 4.01(c) in the collective agreement, affecting all train service, which includes ore train, passengers and way freight.

Specific tickets from:

T. Burns	claims 154 miles	paid 150 miles
J. Y. Vigneault	claims 259 miles	paid 244 miles
A. R. Parent	claims 327 miles	paid 268 miles
A. R. Parent	claims 445 miles	paid 336 miles

These were all cut per circular and not according to the collective agreement.

The Company's contention is that CROA Case Nos. 620 and 619 on work train service will apply to all other services according to the Arbitrator.

FOR THE EMPLOYEES:

(SGD.) G. ROBICHAUD
VICE-CHAIRMAN

There appeared on behalf of the Company:

J. Bazin	– Counsel, Montreal
R. Beaulieu	– Superintendent, Labour Relations, Sept-Îles
G. A. Dolliver	– Acting Manager - Transportation, Sept-Îles
C. Nobert	– Labour Relations Assistant, Sept-Îles

And on behalf of the Brotherhood:

G. Robichaud	– Vice Chairman, Sept-Îles
J. Roy	– General Chairman, Sept-Îles
R. J. Prou1x	– General Chairman, Quebec City

AWARD OF THE ARBITRATOR

In its circular No. 106 issued August 23, 1977, the Company advised all concerned on the manner in which it intended to apply the Arbitrator's Award in **Cases 619** and **620**.

Although the two cases dealt with work trains, the Company maintained that in these cases there existed principles which had general application. Therefore, on August 23, 1977, the Company applied its interpretation of Article IV of the Collective Agreement in a manner similar to that expressed in the two above-mentioned awards. It should be added that the parties have, nevertheless, come to an understanding on how the employees would be paid until the issue was settled through arbitration.

Article IV of the Collective Agreement reads as follows (excluding Article 4.03 which is nor material):

Article IV – Overtime and Through Mileage

4.01 a) On runs of more than one hundred and twenty-eight (128) miles or less, overtime shall begin at the expiration of eight (8) hours on duty. Payment shall be made for hours on duty or miles run whichever is the greater.

b) On runs of more than one hundred and twenty-eight (128) miles, overtime will begin when the time on duty exceeds the miles run divided by twenty (20) excluding initial and final terminal time. Payment shall be made for hours on duty or miles run whichever is the greater.

c) In express service and mixed service on runs of more than one hundred and twenty-eight (128) miles, overtime will be paid when time on duty exceeds the miles run divided by twenty-five (25), excluding initial and final terminal time. Payment shall be made for hours on duty or miles run whichever is the greater.

4.02 Overtime shall be paid for on the minute basis at the overtime hourly rate provided except that trainmen in work train service shall be paid double (2) time after twelve (12) hours on duty.

This article appears to me to have general application with the exception that it deals specifically with work trains in the second half of Article 4.02. Therefore, even though the provision came into application in **Case 620** and that Conductor Robitaille was entitled to be paid double time after 12 hours of service, it remains that the other provisions of Article IV, having general application, were interpreted in **Cases 619** and **620**. I am not convinced that those decisions were incorrect.

The four instant grievances are cases involving trainmen in ore train service or mixed train service. Each case involves a trip of more than 128 miles. Overtime is, therefore, involved. I take as example the case of Mr. Vigneault who made a return trip from Mai to Mai, October 20, 1977. The distance travelled was 187 miles. Therefore, it is obvious to me that Article 4.01(b) and 4.02 are applicable in this case. The first sentence of Article 4.01(b) indicates that overtime is involved (because it involves a trip of more than 128 miles) and it gives a formula by which to determine from what moment overtime will begin. The second sentence of Article 4.01(b) as well as Article 4.02 (except for the part dealing inclusively with work train) gives the method of payment.

It appears to me important to make two comments on the provisions just quoted. Firstly, I must read and apply the provisions of the Collective Agreement as they are. If there is an "error" in the Collective Agreement, an Arbitrator does not have the power to correct it. The actual terms of the Collective Agreement as quoted, appear clear to me, and my duty is to apply them with as much care as possible. Secondly, it must be noted that the time at which overtime begins varies depending on the distance travelled. This system can lead to apparent anomalies but it could be that the anomalies are only apparent, and that they are explainable within the context of a railway system.

In the case of Mr. Vigneault, his trip of October 20, 1977, as I have stated, was 187 miles, excluding initial and final terminal time. If we divide, as required by Article 4.01(b), this mileage of 187 by 20, we arrive at a figure of 9.35, which translated into hours and minutes amounts to 9 hours and 21 minutes. The parties use a table appended to the Collective Agreement to convert miles into hours in order to determine the time from which overtime hours will commence.

According to this table in a trip of 187 miles, overtime commences after 9 hours and 20 minutes of work, excluding initial and final terminal time.

Therefore, on October 20, 1977, Mr. Vigneault was on duty for a total of 12 hours and 20 minutes of which 1 hour and 5 minutes constituted initial and final terminal time (for which he was paid a total of 17 miles at the regular rate and which is not in question in the present case). The net length of time of the work performed for the purposes of Article 4.01(b) was therefore 11 hours and 15 minutes. During these hours of work, Mr. Vigneault performed pick up and set off for a total of 2 hours and 30 minutes for which he was paid 40 miles at the regular rate. This amount, however, was not deducted from the figures before us in the application of Article 4.01(b), and here again this is not here in dispute.

The result is that, notwithstanding the payments for initial and final terminal time and for picking up and setting off, Mr. Vigneault had the right to be paid 187 miles. At the same time, he had the right to be paid at overtime rates for all the time he had worked after 9 hours and 20 minutes. Article 4.01(b) in its second sentence clearly explains that "*Le paiement se fera pour les heures en service ou les milles parcourus, selon le montant le plus élevé*."

We must, therefore, (where the end result is not clear) make the calculation using both methods. The payment for the miles run would be, in the instant case, 187 miles or $85.50. The payment for the hours in service, on the other hand, consist of two parts: the first of 9 hours and 20 minutes at the regular rate, or $68.51, the equivalent of 149 miles; the second of one hour and 55 minutes at the applicable overtime rate, or $21.10, the equivalent of 46 miles.

This second method yields a higher amount, this method must be followed in the present case. This is what the Company actually did. It must be noted that in each step, we use, as much as possible, miles as the basis for calculation. The result is that the Company correctly followed the method of payment provided in the Collective Agreement. The Agreement having been observed, the grievance must be declined.

(signed) J. F. W. WEATHERILL
ARBITRATOR