

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 166

Heard at Montreal, Tuesday, September 9th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

Claims of mileage-rated drivers J. Petz and J. Smith for trip Regina to Virden, Manitoba, and return (360 miles) at the applicable mileage rate and including all work and delay time actually paid on Routes 141-142 and 143-144 on January 25th, 1968.

JOINT STATEMENT OF ISSUE:

J. Petz and J. Smith were assigned by bulletin to highway Route 141-142 and 143-144, Regina to Virden and return, a distance of 360 miles, departing Regina at 21.15 o'clock, returning at 06.00 o'clock. On their January 24th, 1968, trips both drivers were required by the Company to proceed through to Brandon, Manitoba, due to weather conditions to pick up their return roads. The distance from Regina to Brandon and return is 464 miles. Upon their return to Regina at 18.30 o'clock the following day, January 25th, Messrs. Petz and Smith were advised by the Company's representatives that they could not cover their regular highway routes on the evening of January 25th, 1968 account not having had the minimum eight-hour rest period required under the company's regulations for mileage-rated drivers.

The Brotherhood contends that Clause 15.9 of the Agreement requires employees receive 48 hours notice of lay-off and that as this was not given in this instance, this clause was violated. Clause 15.9 reads as follows:

Article 15 – Reduction and Increase in Staff

15.9 Regularly assigned employees (those who have regular assignments and report for duty each day of their assignment without notification, including employees contemplated in Clause 11.7) who are unable to establish themselves as a result of staff reduction shall be given as much notice of layoff as possible and, in any case, not less than forty-eight (48) hours; and unassigned employees (those who report for duty only as required or notified due to their work being irregular) shall be given as much notice as possible. The forty-eight (48) hour period of notice may be given during the tour of duty or while employees are off duty due to vacation, bona fide illness or leave of absence, but shall be exclusive of assigned rest days and statutory holidays specified in Clause 8.1.

The Company contends that Clause 15.9 has no application in this instance.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) C. C. BAKER
MANAGER, INDUSTRIAL RELATIONS, CP TRANSPORT

There appeared on behalf of the Company:

C. C. Baker – Assistant to General Manager, Merchandise Services, Vancouver
D. Cardi – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Don Mills

G. Moore – Vice-General Chairman, Moose Jaw,
W.C.Y. McGregor – International Vice-President, Montreal
F. C. Sowery – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievors left Regina on their regular assignments in the late evening of January 24, 1968, as set out in the joint statement of issue. They arrived at Virden, their destination, at about 1:30 a.m. on January 25. In the usual course, they would then have returned to Regina, returning at about 6:00 a.m. On the morning in question, however, it was necessary for them to proceed through to Brandon, where they arrived at about 3:00 a.m. They had 8 hours' rest, and then made the return trip to Regina, from 1:00 to 6:30 p.m. on January 25. Thus, when it was time for their assigned trip at 9:15 p.m. on January 25, they had not had the 8 hours' rest required of drivers by the company's regulations. The rule requiring an 8-hour minimum rest period before highway trips is an obviously reasonable one, and is not challenged. It is the union's contention, however, that the grievors were entitled to 48 hours' notice pursuant to article 15.9 of the collective agreement.

Article 15 of the agreement deals generally with the matter of reduction and increase in staff. Article 15.9 simply requires that in the case of regularly assigned employees (such as the grievors), certain notice shall be given, whereas in the case of other employees the same specified notice is not necessary. The provision applies, plainly, only in cases where there is a staff reduction. In the instant case there was no staff reduction, or cutback in the Company's operations. What happened was simply that the grievors were prevented from carrying out their regular assignments of the night in question, by reason of the operation of the 8-hour rest rule. There is nothing to suggest that the company's operations themselves were reduced.

Because of the unexpected extra work which they performed on January 25, the grievors, pursuant to the 8-hour rest rule, were unable to perform their regular work that evening. Article 15 is not addressed to this problem, and does not support the grievors' claims in the instant case.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR