

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 340

Heard at Montreal, Tuesday, March 14, 1972

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims submitted by Conductor J.A. Brabant, for mileage earned by his regular assignment on April 19th and 20th, 1971, when he was subpoenaed by the Hull Court to testify as a witness.

JOINT STATEMENT OF ISSUE:

Conductor J.A. Brabant was the Conductor in charge of train No. 134 which was involved in an accident with a vehicle at Montclair Boulevard in Hull, Quebec, on April 7th, 1971. The Court subpoenaed Conductor Brabant to appear as a witness in connection with charges that were laid against the driver of the vehicle for deserting the scene of an accident and for operating a vehicle after his driver's permit had been suspended.

Conductor Brabant submitted claims for 160 miles for April 19th and 160 miles for April 20th which was the mileage earned by his assignment while he was attending Court. The Company declined payment of the claims.

The Union contends that by declining payment the Company has violated Article 23, Clause (c) of the Collective Agreement.

FOR THE EMPLOYEES:

(SGD.) L. H. BREEN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. L. GUERTIN
REGIONAL MANAGER, O & M, ATLANTIC REGION

There appeared on behalf of the Company.

R. L. O'Meara – Supervisor, Labour Relations, Montreal
D. D. Wilson – Labour Relations Officer, Montreal

And on behalf of the Union:

L. H. Breen – General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 23 (c) of the collective agreement provides as follows:

(c) Held off on Company's Business or Coroner's Inquest, Court Cases

Trainmen held off on Company's Business or on Company's order, will be paid schedule mileage rates for mileage lost and actual reasonable expenses incurred.

Trainmen called as witnesses in Court by the Company or before a Coroner's inquest, will be allowed time minimum day's pay passenger rate, for each twenty-four (24) hours or portion thereof. Men assigned to regular runs so held will receive not less than the regular rate for the time lost. Actual reasonable expenses incurred will be allowed. Court witness fees and mileage will be assigned to the Company in cases in which pay is allowed.

The accident with respect to which the grievor was required to testify in Court occurred during the course of his tour of duty, and while he was on the Company's business. The charges laid against the driver of the vehicle involved in the accident were, however, not laid by the Company and the matter before the Court was not one in which the Company was directly involved. The grievor was not called as a witness by the Company, nor was he "held off on Company's business or on Company's order". By contrast, it may be noted that in other proceedings arising out of the same accident, the grievor was in fact called as a witness by the Company and on that occasion he was, quite properly, paid in accordance with Article 23.

There are collective agreements which provide for payment to employees called for jury duty, or called as witnesses in Court proceedings. The provisions of the collective agreement here in question are, however, very limited in this respect. The grievor's case simply does not come within those provisions. While the accident occurred while the grievor was on the Company's business, the Court proceedings here in question were not the Company's business, and the grievor did not appear in Court, in this instance, on the Company's business or order.

The claim is not one provided for by the collective agreement and accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR