

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 436

Heard at Montreal, Tuesday, April 9th, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL  
WORKERS

### DISPUTE:

Payment of wages and travelling expenses to an employee undergoing periodic medical examination.

### JOINT STATEMENT OF ISSUE:

Mr. A.J. Green, employed as Assistant Steward in the Company's Newfoundland Steamship Service, was instructed to undergo periodic medical examination. He subsequently obtained medical, while off duty on assigned rest days, at St. John's Newfoundland and submitted claim for one day's pay (12 hours plus mileage and travelling expenses between his home and St. John's, which was declined by the Company. The Brotherhood claimed violation of Articles 7.1, 9 and 20.1 of Agreement 5.25.

The Company has offered payment of two hours' pay at time and one-half to compensate for time undergoing examination but this has been declined by the Brotherhood.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. A. PELLETIER (SGD.) G. H. BLOOMFIELD

NATIONAL Vice-President ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company.

G. J. James – Labour Relations Assistant, Montreal

D. J. Matthews – Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

L. K. Abbott – Regional Vice President, Moncton

J. A. Pelletier – National Vice President, Montreal

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### AWARD OF THE ARBITRATOR

It was one of the arguments advanced by the Union in this case that because the Company had offered certain payment to the grievor in settlement of his claim, it was thereby estopped from contesting the validity of the claim. It should be said at once that offers of settlement do not in themselves constitute admissions of liability. In this case, however, the Company has acknowledged a liability to compensate the grievor for time undergoing examination, in accordance with the decisions in certain cases in the Canadian Railway Office of Arbitration, notably **Cases 310 and 311**.

In the instant case the grievor was required by the Company, as a condition of his employment to undergo a medical examination, and I find that in doing so the grievor was subject to the direction and control of the Company spending time on a matter relating to his work, and was correspondingly entitled to payment. The substantial question in this case is as to the amount of payment to be made to the grievor in this particular case.

The general principle governing the matter is clear, the grievor would be entitled to payment for all time reasonably and necessarily spent on the Company's business in connection with the examination, and to reimbursement for all expenses reasonably and necessarily incurred. The determination of what amounts might be payable pursuant to that principle in the particular circumstances of the instant case is what must now be done.

The grievor, as an employee in the Newfoundland Steamship Service, works under an averaging system, taking fifteen calendar days rest for each fifteen days worked. On April 13, 1973, a few days before his release at Port aux Basques for assigned rest days, he was handed a medical form and instructed to have the necessary medical examination and X-ray before he resumed duty on day 1. The grievor then went to his home in Pointe Verde, Placentia Bay, some five or six hundred miles away. During the period of his rest days, the grievor obtained the required medical while at St. John's (eighty miles from his home), on April 26.

No arrangement was made to have the grievor take his medical examination either immediately before or immediately after a tour of duty. It seems natural in the circumstances that the grievor felt required to travel to undergo, and return from the medical examination on his own time. Of course where a person goes to work in the ordinary course the travel time necessarily involved is, usually, on his own account. Thus, it is the grievor's own affair that he lives at a considerable distance from his terminal port. The situation is explained by the nature of the grievor's schedule. Where, during the protracted period of time off which the grievor has on that schedule the Company requires him to perform certain functions, it cannot, in these circumstances, be said that the distance at which he lives from the terminal is his own affair.

It is agreed that in fact the grievor did have to travel to undergo the medical examination. It was the Union's position that the nearest facilities for the examination in question were at St. John's, and that is not denied. Accordingly, on the material before me, I find that the grievor acted reasonably and properly in going to St. John's during the course of his period of days of rest, to undergo the examination in question. This was done at the direction of the Company, and the grievor is entitled to recover the expenses necessarily incurred. A mileage charge at the rate of ten cents per mile is not unreasonable and that claim, together with a claim of \$3.00 for meals, which is also reasonable, must be allowed.

The determination of the payment for the time involved would require, in the instant case, the computation of time spent in travel and at the examination itself and in whatever was necessarily incidental to that. It would seem that a claim for a regular day's pay, at straight-time rates, would result in a payment approximately equivalent to the amount which would be payable on the basis of a detailed calculation, but if the Company requires a detailed claim it is certainly entitled thereto. Whether such a claim should be paid at some premium rate is a matter which was not fully argued and as to which I make no determination at this time.

For the foregoing reasons, and having regard to the circumstances of this particular case, the grievance must succeed. It is my award that the grievor be paid in accordance with the foregoing.

**(signed) J. F. W. WEATHERILL**

**ARBITRATOR**