

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 642

Heard at Montreal, Tuesday, December 13, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Claim of Mr. William Powell of the Freight Claim Agents' staff, Toronto, Ontario, that overtime claim account attending derailment at Mileage 76.0 White River Subdivision, March 30, 1977 to April 1, 1977, was improperly reduced by five and one-half hours.

JOINT STATEMENT OF ISSUE:

Mr. William Powell, Senior Investigator, was ordered to attend derailment on Mileage 76.0 White River Subdivision and during the course of this assignment worked nine and one-quarter hours and travelled five and one-half hours outside regular assigned hours. An overtime claim for fourteen and three-quarter hours was submitted.

The Company reduced the claim by five and one-half hours representing travelling time outside regular hours. The Union contends that the five and one-half hours of travel time should be considered time worked and should have been paid for at time and one-half in accordance with Article 30.1 of the Collective Agreement.

The Company refused payment of the claim.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. F. HANKINSON
DIRECTOR OF ACCOUNTING

There appeared on behalf of the Company:

D. Cardi – Labour Relations Officer, Montreal
G. M. Booth – Personnel Officer, Finance & Accounting, Montreal

And on behalf of the Brotherhood..

W. T. Swain – General Chairman, Montreal
D. Herbatuk – Vice General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 30 of the collective agreement is as follows:

Article 30 – Travelling Away From Headquarters

30.1 Employees assigned to duties which require travelling away from their headquarters shall, while so assigned, be paid for their regularly assigned hours at headquarters and, in addition, for all time worked on proper authority outside the limits of such regularly assigned hours. They shall be paid actual necessary expenses, including sleeping car accommodation.

30.2 Stores employees sent out on the road to work temporarily shall be allowed pro rata rates while travelling and actual reasonable expenses they necessarily incur.

The grievor in this case was assigned to duties which required travelling away from his headquarters. On Wednesday, March 30, the grievor spent an amount of time which exceeded his normal hours of work in travel, and as well, performed overtime work. He was paid for his regular assigned hours that day (which had been spent in travel) and for overtime work actually performed. He was not paid for time spent in travel in excess of his regularly assigned hours.

I agree with the submission of the Union that an employee who travels away from his headquarters in order to reach a work site is travelling on Company business and is, in a certain sense, “at work” even while travelling. He is not, however, performing the work of his classification at such times. He may, depending on the circumstances, be entitled to payment, but such entitlement depends on the provisions of the applicable collective agreement. In the instant case, the collective agreement deals expressly with this situation.

Article 30 was also dealt with in **Case No. 555**. That case was, if anything, stronger than the instant case, since it involved a claim for time spent in travel on a rest day. As was stated in **Case No. 555**, there is only one situation in which actual travel time is, as such, to be paid for: that is the situation dealt with in Article 30.2. All other cases therefore come under Article 30.1. That article provides that, during an away-from-headquarters assignment, an employee is paid for his regularly assigned hours, as well as for “time worked on proper authority” beyond those hours. The reference to “time worked” must be read, in the context of Article 30 as a whole, as a reference to time spent actually performing work, and not as a reference to time during which a person might be said to be “at work” in the very broad sense mentioned earlier. It could not be read in this latter way in the light of Article 30.2 which is an explicit provision for payment in respect of time spent in travel. The necessary inference is that in other cases, time spent in travel is not to be paid for as such. Thus in the instant case there was no requirement for payment for time spent in travel in excess of the grievor’s regularly assigned hours.

Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR