

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 679

Heard at Montreal, Tuesday, October 10th, 1978

Concerning

**CANADIAN PACIFIC EXPRESS LTD.**

and

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

### **DISPUTE:**

Claim for wages at overtime rates for Vehicleman B. Leeming, Hamilton, Ontario, January 26th and January 27th, 1978.

### **JOINT STATEMENT OF ISSUE:**

Employee B. Leeming was dispatched to St. Catharines, Ontario, January 26th, 1978, with a trailer to clear Customs and deliver to consignee.

A storm, which had been forecast, worsened and employee B. Leeming was unable to return to his home terminal, Hamilton, Ontario, until morning of January 27th, 1978.

He was paid his regular wages plus hotel and meal allowance by being under direction of Company Officers to stay and make delivery. Claim was made the employee be reimbursed for all time away from his home terminal that were outside his regular working hours.

### **FOR THE EMPLOYEES:**

**(SGD.) L. M. PETERSON**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) D. R. SMITH**  
**DIRECTOR, LABOUR RELATIONS AND ADMINISTRATION**

There appeared on behalf of the Company:

L. Brunelle – Regional Manager, Montreal  
D. R. Smith – Director, Labour Relations & Administration, Toronto  
D. Cardi – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – Vice General Chairman, Toronto  
F. W. McNeely – General Secretary Treasurer, Toronto  
M. Gauthier – Local Chairman, Montreal

### **AWARD OF THE ARBITRATOR**

At 08:00 on January 26, 1978 the grievor was dispatched from his terminal at Hamilton with a container load of bonded traffic which was scheduled to clear customs at St. Catharines and then be delivered to a customer's store there. The grievor made the run to St. Catharines, but at 11:00 telephoned Hamilton to report a delay due to the customer not having the correct papers. At 14:00 the grievor telephoned again to advise that he had arrived at the customer's premises. He was advised to unload the container and return to Hamilton. At 15:00 he telephoned again to advise that the container had been unloaded but that the weather had deteriorated. There was, in fact, a severe storm, and it had become impossible for the grievor to return to Hamilton that day, although it would have been possible for him to have returned earlier. Had he done so of course, the load would not have been delivered when it was. There is no question, in these circumstances, of any fault on the part either of the grievor or of the Company.

The grievor was instructed to proceed to the St. Catharines Terminal where he dropped the empty container. He then proceeded with the tractor to a motel where arrangements had been made for him to stay. He was released from duty at approximately 15:30. He was paid, in respect of that day, a full eight hours, that is, as though he had worked up to 17:00.

The following morning, the grievor returned to the St. Catharines Terminal, hooked up the empty container and left for Hamilton at about 09:00, arriving there and booking off duty at 10:35 hours. He was paid, in respect of that morning's work, a minimum call of four hours. His accommodation and meals were paid for by the Company.

The Union contends that the grievor should be paid, at overtime rates it would seem, for all time held beyond regular hours of duty. This claim is said to be based on the fact that the grievor was not allowed to return home when it was possible to do so, but was required to carry on with his assignment. There is, however, no provision in the collective agreement to support this claim. A somewhat similar claim was made in **Case No. 661**, although there was there no contention that the grievors ought to have been allowed to give up their assignments and go home early. In any event, no basis for the claim appears from the collective agreement, and I was not referred to any provision supporting the Union's claim. Unless it is founded in some way on the collective agreement, the grievance must fail.

I note that Article 33.6 of the collective agreement deals with mileage-rated Vehiclemen required to lay-over away from their home terminal. There is provision for certain limited compensation in that case, in respect of lay-overs of more than 14 hours. That provision was not referred to in this case, but even if it did apply to this situation, it would be of little if any benefit to the grievor, who worked substantially less than the minimum call which he was paid.

There has, in the circumstances, been no violation of the collective agreement, and the grievance must be dismissed.

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