

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 714

Heard at Montreal, Tuesday, July 10th, 1979

Concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

DISPUTE:

Claim for away-from-home expenses by Relief Dispatcher J.A. VanWyck, Calgary, Alberta.

EMPLOYEE'S STATEMENT OF ISSUE:

As of June 1 1977, Relief Dispatcher J.A. VanWyck was awarded a permanent position at Coalhurst, Alberta, and qualified for away-from-home expenses under Article 19.01.01 of the Collective Agreement.

The Company denied the claim as he had not as yet worked the position.

The Organization states that the Agreement reads, "... holds an established position ..." and not, "... is established in a position".

**FOR THE EMPLOYEE:
(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN**

There appeared on behalf of the Company:

P. E. Timpson – Assistant Supervisor, Labour Relations, Vancouver
M. Morrow – Assistant Superintendent, Transportation, Vancouver

And on behalf of the Brotherhood:

D. C. Duquette – General Chairman, Montreal

AWARD OF THE ARBITRATOR

Before the circumstances giving rise to this grievance occurred, the grievor held a position as third operator at Alyth, which is within the Calgary Terminals area. His permanent residence was at Fort McLeod, although it appears that the grievor had living accommodation in the Calgary area. He worked during this period as a Relief Dispatcher at Calgary. His headquarters were within the Calgary area, and he had no claim for expenses.

On May 31, 1977, the grievor was awarded the full-time position of Operator at Coalhurst, some 120 miles from Calgary. He seems to have advised the Company that his permanent residence would continue to be at Fort McLeod, although as will be seen that is not a material consideration in the disposition of this case.

Article 19.01.01 of the collective agreement is as follows:

19.01.01 The headquarters of a Spare Telegrapher is as specified in Article 18.05.01. The headquarters of a Spare Dispatcher, Spare Traffic Supervisor or Relief Agent is the same as that specified in Article 18.05.01 for a Spare Telegrapher unless such employee holds an established position on the division, in which case the point where he is so established shall be his headquarters.

As a result of the grievor's being appointed to the position in Coalhurst, it would appear that that was the point where he was "established" and that it was therefore his headquarters. He did not, however, move there until the end of August, 1977, nor was he required to do so. Indeed, his services were required as Relief Dispatcher at Calgary until August 28, 1977, after which he took up his position at Coalhurst.

Article 19.01.01 prescribes what shall be the "headquarters" of an employee but it does not expressly deal with the matter of expenses. That is dealt with, insofar as this case is concerned, in Article 19.03.03, which is as follows:

19.03.03 If an employee while occupying a relief or swing position is unable to return to his headquarters on any day, he shall be granted an allowance of \$12.00 for each such day, or in lieu thereof, if an employee desires to travel by his automobile between the work point and his headquarters, he may do so when authorized by the Company officer in charge in which case he shall be reimbursed at the rate of fifteen cents a mile via the shortest distance with a maximum of \$.12.00 for the return trip. If he elects to travel by bus or other public transportation, he will be allowed the amount of the fare up to the maximum of \$12.00 for the return trip.

Reference must also be made to Article 19.01.03:

19.01.03 If an employee relieves at a point that is within the same municipal boundary as his headquarters or his place of residence, he shall not be granted any allowance.

In fact, during June, July and August 1977, the grievor worked at Calgary, and even if Coalhurst had become his "headquarters" he had not begun his duties there, and had not been under any requirement to move there. His work remained at Calgary. There was no question, then, of his being "unable to return to his headquarters" on any day, because he had never left in the first place. What occurred in the instant case was simply not the sort of situation contemplated by Article 19.03.03. Further, since the grievor was in fact living in the Calgary area while he was working there (even if he maintained his own permanent residence at Fort McLeod), it is clear from Article 19.01.03 that the grievor was not to be granted any allowance. The situation, it may be added is quite similar to that which was dealt with in **Case No. 41**, although the collective agreement provisions are not identical.

While I have dealt with the grievance on the merits, I would add that it appears that the matter was in fact settled between the parties. A letter from the Company describing the terms of settlement of this and other grievances was not acknowledged by the Union, but was acted on (payments were made to employees) in the other cases and appears to have been relied on by both parties in the disposition of subsequent matters. If the settlement had been rejected by the Union with respect to this one case, there was an onus on the Union to make that fact known to the Company at once, before the other aspects of the settlement were acted on. It would be my view that this matter was in fact included in the settlement, and for that reason would not be arbitrable.

On either of the above grounds, therefore, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR