

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 721

Heard at Montreal, Wednesday, October 10, 1979

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Mr. G. Roberts claim for payment of "Air Transportation Supplement" for his vacation is denied by the Railway.

JOINT STATEMENT OF ISSUE:

Mr. Roberts received vacation pay while the work force was on lock-out status. During the negotiations, both parties agreed to replace the "Northern Allowance Supplement" for the "Air Transportation Program" and it was agreed that this payment of the value of Commercial Airline tickets will be paid on return to work following annual vacation of the employee. Mr. Roberts never returned to work after the strike and lock-out settlement and his services were terminated effective December 15th, 1978 for absence without leave. He filed his application for Air Transportation retroactive payment on January 29th, 1979 which was denied by the Railway.

The Union claimed he should be paid Air Transportation. The Railway rejected same.

FOR THE EMPLOYEE:

(SGD.) L. LAVOIE

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R.L. BEAULIEU

SUPERINTENDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	– Counsel, Montreal
S. Deslauniers	– Counsel, Montreal
R. L. Beaulieu	– Superintendent, Labour Relations, Sept-Îles
R. P. Morris	– Superintendent, Labour Relations, Sept-Îles
J-P Morel	– Assistant Labour Relations Officer, Sept-Îles
J. P. Chenier	– Train Dispatcher, Sept-Îles
R. B. Copp	– Chief Clerk, Sept-Îles

And on behalf of the Brotherhood:

D. McLean	– Local Chairman, Labrador City
J. M. St.Pierre	– Local Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

The "Air Transportation Program" which was negotiated between the parties and under which this claim is made, is as follows:

AIR TRANSPORTATION

Effective March 1st, 1978 or if not approved by the Anti-Inflation Board, January 1st, 1979, the Company will replace the current Northern Allowance Supplement by an air transportation program, at Company cost for employees residing and permanently stationed at Labrador City and Schefferville, once per year per family at the time of his annual vacation. For married employees, transport will be provided for the employee, his wife and their children. Children are defined as not fully employed children under 18 or who are full time students under 22. Air transportation will be supplied from Labrador City or Schefferville to St. John's, Nfld., or Montreal and return. In the future, in the event that the Company sets up an air transportation system operated by the Company that provides this transportation, the Company reserves the right to negotiate and on agreement with the Union withdraw the cash equivalent option. The withdrawal will take effect within thirty (30) days of the introduction of this new Company system. It is also understood between the parties that the cash equivalent for employees permanently residing in Labrador City will be for a trip to St. John's, Nfld., and for employees permanently residing at Schefferville will be for a trip to Montreal, and in both cases 50% of the cash equivalent will be advanced when leaving for vacation and 100% will be paid on return to work following annual vacation. Furthermore, the cash equivalent paid for a married employee will be the lowest application cost to the Company had the employee and his family travelled at the same time."

The grievor was an employee of the Company throughout the period of negotiations, and when the collective agreement was made. It provided for the Air Transportation Program as a retroactive benefit, and that was subsequently approved by the Anti-Inflation Board. In March, 1978, the grievor went on medical leave. Subsequently, in April, he went on vacation. He was due to return in May, but did not do so, on medical grounds and at a later period was again on medical leave. His employment was terminated on December 15, 1978, so that the grievor never in fact returned to work following his vacation.

The benefit was one to which the grievor was, in general, entitled in respect of 1978. He was on vacation during that year and received vacation pay. He would be entitled to an advance of the cash equivalent on leaving for vacation, and to the balance on his return from work. This payment in stages would appear to serve a purpose somewhat analogous to that of "qualifying days" for holiday pay: it is not intended to confer the full benefit on those who go away and never come back. It is noteworthy, however, that half of the benefit was payable at the outset of vacation, and that that entitlement is not lost in any circumstances. To that extent at least, then, the grievance must succeed.

The grievor did not, however, return to work following his annual vacation. He returned, at best, to the status of being on medical leave, although for a part of the period preceding the termination of his employment he must be said to have been absent without leave. The condition of receipt of the balance of the benefit, therefore, was not met, and the grievor was not entitled to payment thereof. To this extent, then, the grievance must fail.

In the result, and for the foregoing reasons, it is my award that the grievor be paid 50% of the cash equivalent of the Air Transportation benefit.

(signed) J. F. W. WEATHERILL
ARBITRATOR