

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 792

Heard at Montreal, Tuesday, November 11, 1980

Concerning

**CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(C.P. TRANSPORT - WESTERN DIVISION)**

and

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

EX PARTE

DISPUTE:

Union claim Company cannot issue instructions that violate collective agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Article 30.3 provides that a driver is responsible for fueling tractor upon arrival at their final destination.

Company instructions ordered drivers to stop and fuel at intermediate terminals.

The Union claim that the second driver of the sleeper team should be paid at terminal delay time (Article 31.3).

FOR THE EMPLOYEES:

(SGD.) R. WELCH

SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Smith Transport, Toronto

And on behalf of the Brotherhood:

R. Welch – System General Chairman, Vancouver

D. Herbatuk – Vice General Chairman, Montreal

AWARD OF THE ARBITRATOR

The Union's contention in this case is that payment should be made to second drivers (in cases of sleeper-cab teams) where the vehicle is stopped for fueling at an intermediate point.

In the past, vehicles had refuelled en route as required, and single drivers, or the driver of a sleeper team, had been paid a fifteen minute allowance in respect of such stops. Recently, however, the Company has required, in some cases at least, that fueling be done at terminal points en route. This may involve a certain detour from the regular route, and may as well involve additional time and inconvenience for the driver, and perhaps also the second driver.

The parties have not reached any explicit agreement as to payment in such circumstances. The collective agreement itself does not deal expressly with the matter. "Terminal delay" is described in Article 30.2 as occurring when a driver is held over at the Terminal point beyond the time he was advised to report for duty. It is said to be exclusive of "time spent performing such normal duties as inspecting and servicing unit, adding oil and coolant ..." etc. It is understood – as Article 30.2 states – that such duties are paid for by the mileage rate of pay.

There is provision for payment where an assignment is extended beyond eleven hours (with certain exceptions), (see Article 30.8), but it is not suggested that that provision would apply generally to the situations which have given rise to this grievance. It may be that the requirement of refueling at en route terminals should be considered as changing the point-to-point mileages, but the parties did not address themselves to that point in their presentations, and that question was not put in issue.

In any event, there is no provision in the collective agreement which has been shown to affect the Company's right to designate fueling points, and the instructions cannot be said to violate the agreement. That being the case, this grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR