

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 855

Heard at Montreal, Wednesday, September 9, 1981

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

EX PARTE

DISPUTE:

This concerns delay time pay claimed in the name of a mileage rated vehicleman for time spent in extension to and outside of his regularly scheduled bulletined and awarded assignment as established by Article 7.2.11 of our Working Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Mileage rated driver R. Inouye who works the Regina – Maple Creek route known as route 391-392 – bulletin #H-4, was instructed to proceed beyond his regular turn around point enroute to Medicine Hat which is outside of and in extension to his regularly scheduled hours of service and he was delayed at Medicine Hat for ninety (90) minutes, he booked this delay time at the delay time rate.

The Brotherhood contends that all such delay time was due to a directive by a Company Officer and that this extension to his regular route was fully carried out by this mileage rated vehicleman.

The Brotherhood demand delay pay as provided in Article 33.3 for all delay time booked at Medicine Hat, Alberta, by mileage rated vehicleman R. Inouye.

The Company suggests that such additional time is wait time as in Article 33.5 and for this reason have declined the Brotherhood's request.

FOR THE EMPLOYEES:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. R. Smith – Director Industrial Relations Administration & Personnel, Montreal
B. D. Neill – Manager Labour Relations, Montreal
R. A. Colquhoun – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
G. Moore – Vice-General Chairman, Moose Jaw
J. Crabb – Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

Article 33.3 of the collective agreement is as follows:

33.3 A mileage-rated Vehicleman will be paid for all terminal delay on the actual minute basis.

“Terminal delay” is defined in article 33.1 as follows:

33.1 Terminal delay occurs when a vehicleman is held over at the terminal point beyond the time he was advised to report for duty, or such later time as he actually reports for duty. Terminal delay is exclusive of time spent performing such normal duties as inspecting and servicing units, picking up running orders, bills and any other preparatory duties that may be assigned, it being understood that all such duties are paid for by the mileage rate of pay.

The short answer to this grievance (which on the Brotherhood’s statement of issue, is a claim under article 33.3), is that the delay in which the grievor was involved in this case was not “terminal delay”, and that article 33.3 has no application.

The grievor did have a regularly scheduled assignment, awarded pursuant to article 7, and whose hours and other features were set out in a bulletin in conformity with article 7.2.11. It was, nevertheless, open to the company to make certain alterations in the assignment as circumstances required from time to time. Where such variations occur, the employee may be entitled to some extra payment. A number of such extra payments are contemplated by the various provisions of article 33, which deals with mileage-rated highway vehiclemen.

In the instant case the grievor’s regular assignment was altered in that instead of turning around at Maple Creek he proceeded to Medicine Hat, where he met another driver with whom he exchanged vehicles for the return to Regina. Time spent waiting for a meet or turnaround is “wait time” within the meaning of article 33.5, which is as follows:

33.5 Wait time shall include waiting to be loaded, unloaded, meets or turnarounds exclusive of the first hour, equipment to be repaired and impassable roads to be cleared and shall be paid for on the actual minute basis.

It is clear from Article 33.5 that “the first hour” is to be excluded from the “wait time” which would otherwise be payable in the circumstances of this case. In the instant case, then, the grievor would be entitled to payment on the mileage basis for the extended trip, as well as to payment pursuant to article 33.5, that is to a payment of wait time exclusive of the first hour. Such, it seems is the payment that was made. The grievor was not entitled to payment for the first hour of “wait time”, and the grievance to that effect must fail. Accordingly the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR