

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 856

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 terminal delay time pay claimed in the names of mileage rated vehiclemen for time spent outside of and in addition to their regularly scheduled bulletined and awarded assignments as established in Article 7.2.11 of the Working Agreement.

#### **EMPLOYEES' STATEMENT OF ISSUE:**

Mileage rated vehiclemen B. V. MacFarlane and K. Sargent – Calgary Maple Creek routes were prepared to report for duty at the time spelled out on their scheduled assignments, they were instructed by a Company Officer not to report at their regularly scheduled time but to report four hours and forty-five minutes later, they did report as instructed which delayed them in addition to and outside their regularly scheduled starting and termination time.

The Brotherhood contends that these mileage rated employees have scheduled hours of service as are all terminal employees and are not on duty and in the service of the Company outside of or in addition to their scheduled assignment without being paid for all such time which is considered as delay time sponsored by the Company and beyond the control of these mileage rated vehiclemen.

The Brotherhood demands full delay time as provided in Article 33.3 for all time held in delay at Calgary.

The Company suggests that as these employees were advised not to report for duty at the regular time as spelled out on their scheduled position that they acted in accordance with Article 33.1 and declined the claims.

#### **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

### **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 of the collective agreement 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.

In the instant case the grievors were instructed to report, not at their regularly scheduled starting time of 0445, but rather at 0900. They reported at the later hour as instructed, carried out their assignment and were paid in the usual way. The issue is whether or not they were entitled to payment under article 33.3 in respect of the period from 0445 to 0900.

In my view, the grievors were not entitled to such payment. Terminal delay, as article 33.1 makes clear, 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”. The fact of having a regularly scheduled assignment does not mean, in the absence of clear language in the collective agreement to that effect, that an employee is somehow automatically considered to have reported for duty at the regular time, or that the regular features of the assignment are somehow guaranteed.

In the instant case the grievors, quite properly, reported for duty at 0900. There could be no terminal delay for them before that time. I was not referred to any provision of the collective agreement calling for payment where reporting time is delayed.

For the foregoing reasons, the grievance is dismissed.

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