

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 970

Heard at Montreal, Tuesday, July 13th, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

This concerns a wage claim for 480 miles and all work time for December 4th, 1981, plus all the hours held in Swift Current, December 3rd, 1981, in the name of mileage rated vehicleman, K. Greasley.

JOINT STATEMENT OF ISSUE:

Mileage rated vehicleman, K. Greasley, due to circumstances beyond his control was instructed to and did proceed beyond his regularly hourly scheduled meet at Maple Creek to Swift Current and held there so as to return the units from the East to Calgary at the first opportunity, he was not returned to Calgary in time to go out on his regularly assigned work day December 4th, 1981.

The Brotherhood contend that this mileage rated vehicleman who holds an awarded regularly assigned five day a week position was not provided required four working day advance notice of non-requirement for date of December 4th, 1981, and was improperly denied his regular work day wages he should have earned on this regular work day of December 4th, 1981. The Brotherhood request for the payment of this claim based on Article 7.2.11 and Article 7.3.7.

The Company have declined this claim based on Award 166 and the Company's actions during this period.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL, RELATIONS, PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith – Director, Industrial Relations, Toronto
P. E. Timpson – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

F. W. McNeely – General Secretary-Treasurer, Toronto
G. Moore – General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

Article 7.2 deals with the bulletining of positions, and Article 7.2.11 sets out the standard form for bulletins and awards. The grievor held a bulletined regularly scheduled permanent mileage rated assignment. Nothing in the facts before me suggests that there was anything improper in the bulletin, and there is no issue as to that. Entitlement to pay for a particular day does not necessarily follow from the mere fact of holding a bulletined position. In any event, there is nothing to show any violation of Article 7.2 in this case.

Article 7.3 deals with reduction in staff. Article 7.3.7 is as follows:

7.3.7 (1) Not less than four working day's advance notice shall be given to regularly assigned employees when the positions they are holding are not required by the Company (abolished), except in the event of a strike or a work stoppage by employees in the railway industry, in which case a shorter notice may be given. An employee rendered redundant by the exercise of seniority by another employee will be considered as having been notified in advance by the four-day notice.

7.3.7 (2) When necessary to reduce the hours of duty of a regularly assigned full-time position, such reduction in hours shall be considered as the abolishment of that position and Clause 7.3.7 (1) applies.

In this case the grievor was required to go beyond his regular destination, to lay-over, and then return to his base. As a result of this extended trip (for which he was compensated), the grievor did not return to Calgary in time to have sufficient rest before going out on his next regular trip. He did not therefore make that trip. His position was not abolished, and he was not laid off. As in **Case No. 166**, the grievor could not take out his regular run, because he had not had the required rest.

While Article 7.3.7 is differently worded from the article referred to in **Case No. 166**, the situation which occurred in that case is, essentially, similar to that in issue here. The "reduction and increase in staff" provision was not relevant there, and for similar reasons the "reduction in staff" provision of this Collective Agreement is not relevant here. It is not that the grievor was not required for his position, it is, rather, that because of lack of rest he was unable to perform his regular work. Article 7 is not addressed to this problem, and does not support the grievor's claim in this case.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR