

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1197

Heard at Montreal, Thursday, February 16, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. L. M. Edvardson, Bridgeman, Revelstoke, B.C. was assessed 10 demerit marks on February 25, 1983 for excessive meal expenses and 20 demerit marks on March 17, 1983 for deliberately claiming excessive amounts for meal expenses after being properly instructed as to reasonable and acceptable expenses.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) The expenses submitted by Mr. L. M. Edvardson for January and February, 1983, were in accordance with Section 21.8, Wage Agreement 41. (2.) The Railway pay him another \$211.49 in expenses that was not paid on the original expense accounts and the thirty demerits removed from his record.

The Company declines the Union's request and denies payment.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) L. A. HILL

System Federation General Chairman General Manager, Operation and Maintenance

There appeared on behalf of the Company:

F. R. Shreenan – Supervisor Labour Relations, Vancouver

D. N. McFarlane – Assistant Supervisor Labour Relations, Vancouver

P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa

L. DiMassimo – General Chairman, Montreal

R. Gaudreau – Vice-President, Ottawa

E. J. Smith – General Chairman, London

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AWARD OF THE ARBITRATOR

The Company is required under article 21.8 of the collective agreement to compensate its employees for boarding and lodging expenses they necessarily incur when they are assigned work outside their own territory.

Article 21.8 reads:

21.8 Employees taken off their assigned territory or regular boarding outfits, to work temporarily on snow or tie trains, or other work, shall be compensated for boarding and lodging expenses they necessarily incur. This shall also apply under similar conditions to pump repairers when taken away from their headquarters and to pumpmen when away from their regularly assigned territory.

The grievor was disciplined on two occasions for exceeding "reasonable" claims for the food expenses he had incurred during the months of January and February 1983. The Company allows some flexibility in the amount it will accept as "reasonable" towards the payment of meal claims. That amount is normally determined in terms of the average amount incurred by each member of the grievor's work crew. In most cases the average approximates \$25.00 per day.

There is no dispute that the grievor on several occasions in January 1983 exceeded the "reasonable" limits that appear to have been established by his colleagues. He was advised by B&B Master J. M. Klett to revise his January 1983 expense account to reflect what was reasonable. He did not agree to accede to the said guideline and continued to claim the same amount. Moreover, the grievor, despite the advice of his superiors, continued to submit like meal claims for the month of February 1983 that exceeded the reasonable guideline established by the Company. Accordingly, he had imposed on his personal record 10 and 20 demerit marks for his excessive meal claims for January and February 1983.

The Trade Union submits that the Employer had no right to impose a standard of "reasonableness" in its allowance for meal expenses pursuant to article 21.8 of the collective agreement. The collective agreement plainly allows the employee to claim compensation for expenses they "necessarily" incur. Since it was argued that the grievor was "a big eater" he was entitled to the amounts he legitimately spent towards the purchase of food. In the Trade Union's view so long as an employee can establish that he requires the food he eats then there is no limit on the expenses he might incur.

I do not agree. I am quite satisfied that the Employer in order to be both fair and flexible may impose a standard of reasonableness in the amount of expenses it will allow pursuant to article 21.8 in the way of meals. The average amount incurred by the grievor's colleagues on his crew appears to be an objective measure of what should constitute a reasonable claim. Surely, if the subjective standard, as argued by the Trade Union, of what would be a legitimate amount should prevail it would result in the type of abuse that has occurred in this case. The grievor cannot under the protection of article 21.8 purchase steak and lobster on a daily basis and claim that expense as necessarily incurred in supporting his voracious appetite.

In any event the grievor was warned by his supervisor on the first infraction to adhere to the guideline. He objected and challenged that guideline on a subsequent occasion. This is a classic case of where the grievor ought to have obeyed his supervisor and grieved the guideline under the grievance procedure at a later date. The grievor in both instances was intransigent and insubordinate.

For all the foregoing reasons the disciplinary penalties imposed were appropriate and the grievance is accordingly denied.

(signed) DAVID H. KATES

ARBITRATOR