

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1275

Heard at Montreal, Tuesday, September 11, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that N. S. Hotchen, Machine Operator, Special Group, is entitled to 48 hours at penalty overtime rates while working at or near Lake Louise, Alberta, during the period July 4 to August 25, 1983.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) Mr. Hotchen be paid for travelling time between Medicine Hat and Lake Louise at overtime rates as per Section 2.11 and 11.7 of Agreement No. 41 for the following dates:

July 4, 11, 18 and 25

August 2, 8, 15 and 22

The claim is 6 hours per day, or a total of 48 hours

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

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

D. N. McFarlane – Assistant Supervisor, Labour Relations, Vancouver
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
L. DiMassimo – Federation General Chairman, Montreal
R. Y. Gaudreau – Vice-President, Ottawa
V. Dolynchuk – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The issue in this case is whether the Company must compensate the grievor, Mr. A. Hotchen, at the overtime rate of pay for time spent commuting between his home in Medicine Hat to his designated work workplace (between July 5 to August 25, 1983), at Lake Louise, Alberta. It is common ground that the Trade Union's claim is for payment of Mr. Hotchen's initial trip by automobile to Lake Louise and his subsequent weekend return trips during the period in question. The Trade Union bases its claim on article 11.7 of Wage Agreement Nos. 41 and 42 which reads as follows:

11.7 Employees' time spent travelling on track motor cars or Company-operated vehicles outside of assigned hours shall be paid at the time and one-half rate except while travelling as passengers in a bus, truck cab, crew compartment of a highway vehicle, or in other similar suitable equipment provided for the carrying of passengers, when payment will be made at the straight time rate.

It is patently clear that article 11.7 restricts payment to employees for time spent travelling to a designated work site (on order of the railway) at time and one-half to travel by "track motor cars or Company-operated vehicles" outside of assigned hours. The use by the grievor of his own automobile to make the trip from his residence in Medicine Hat to Lake Louise would clearly not fall in this category.

Article 11.7 further provides that payment shall be made at straight time "while travelling as passengers in a bus, truck cab, crew compartment of a highway vehicle or in other similar suitable equipment provided for the carrying of passengers". While it may very well be that travel by automobile may fall under the term "similar suitable vehicle", it is clear that the Company must either provide the vehicle for carrying passengers or otherwise authorize an employee to use such "similar suitable vehicle" for entitlement to the straight time rate for time spent travelling to the designated work site. In this case the grievor was neither provided an automobile by the employer nor did he otherwise secure the Company's authority to use his own automobile. Accordingly, article 11.7 does not appear to allow the grievor compensation at the straight time rate for time spent travelling during unassigned hours by use of his own automobile.

Because I was requested by both parties to confine my decision to article 11.7 of the collective agreement I shall refrain from making any comment with respect to the applicability of article 11.8 or article 20.5 of the collective agreement to the grievor's circumstance. It suffices to say that the Trade Union has not established a case for payment of the premium at the overtime rate for time travelling to the Lake Louise work site by virtue of article 11.7 when the grievor used his own automobile for that purpose. Accordingly, the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR