

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1437

Heard at Montreal, Thursday, November 14, 1985

Concerning

CP EXPRESS AND TRANSPORT LTD.

and

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

DISPUTE:

Concerns a grievance claim for unpaid wages in the name of mileage rated vehicleman, B. MacFarlane, Calgary, Alberta, for eight hours for date of December 14, 15, 1984, due to being held in Golden, British Columbia, for an impassable road to be cleared.

JOINT STATEMENT OF ISSUE:

Employee B. MacFarlane's regular bulletined assigned position calls for specific miles to drive – hours on duty, commencement and ending time on the Calgary–Golden–Calgary return with no layover, on December 14, 15, due to impassable road the Company placed this employee on layover waiting for the road to open.

The Union's position is that the hours of the regular bulletined assignment of this mileage rated employee were extended beyond ten hours on this tour of duty which was certainly beyond the control of B. MacFarlane and as enshrined in article 33.7 it says that such drivers "shall" be paid on the actual minute basis for all time in excess of ten hours.

The Company's position is that Mr. B. MacFarlane was held in Golden due to impassable roads, that he was then placed on layover as in article 33.6 and held in Golden for eight hours in accordance with article 33.8 and they declined the claim for unpaid wages.

The Union's claim is that his regular claim for this tour of duty for twenty-three hours was reduced to fifteen hours and claim the payment for the remaining eight hours.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Willowdale

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw
M. Flynn – Vice-General Chairman, Vancouver
J. Bechtel – Vice-General Chairman, Toronto
J. Marr – Special Representative, Saint John

AWARD OF THE ARBITRATOR

The issue in this case is whether the grievor is entitled to be compensated for the entire period of time (in excess of ten hours) he was delayed from completing a bulletined run due to the supervening event of an impassable highway. In this regard articles 33.5 and 33.7 provide 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.**

33.7 When an assignment of a mileage rated highway vehicleman is extended beyond ten hours which is beyond the control of the mileage rated vehicleman, he shall be paid on **the actual minute basis for the time in excess of ten hours**, exclusive of time spent loading and unloading units and all paid delays. (emphasis added)

The evidence indicated that the grievor was intended to perform a one day turnaround run between Calgary, Alberta and Golden, B.C. During the course of his return a rock slide made it impossible for the grievor to complete the run. He was forced to return to Golden, B.C. where he encountered a 23 hour delay before he could resume his run. The grievor put in a pay claim for reimbursement for 23 hours pay (inclusive of the lay-over period of 8 hours).

The Company submitted that it was not required to pay the grievor for the lay over period because due to the unforeseen circumstance described herein the grievor was required by it to engage in a layover. And, once a request for layover is made then the Company's sole obligation is to provide the grievor with suitable accommodation. Accordingly, it was argued that the Company acted in accordance with its obligations under articles 33.6 and 33.8 of the collective agreement:

33.6 When a mileage rated highway vehicleman is required or requested by the Company to layover away from his home terminal for a period of time of more than 14 hours, the mileage rated vehicleman shall be compensated for such layover for each and every hour over 14 hours with a maximum of 8 hours in every 22 hour period.

33.8 When a mileage rated highway vehicleman is required or requested by the Company to layover away from his home terminal, the Company shall furnish such mileage rated highway vehicleman with suitable sleeping and toilet facilities for the duration of such layover with no cost to the mileage rated vehicleman.

The Trade Union argues that the "requirement" or "request" referred to in article 33.6 pertains to bulletined positions that are in excess of a day trip. In those hauls that go beyond a day then obviously the Company's obligation does not include the requirement to pay an employee for his layover time. This, of course, was not the situation before me.

The plain language of article 33.7 requires the Company to pay an employee on an actual minute to minute basis (beyond ten hours) for delays in completing his assignment where the cause of the delay "is beyond the control of the vehicleman". There is no qualification contained in that provision that would exclude layover time from any supervening contingency that caused the delay. Indeed, the provision clearly refers to payment on "an actual minute to minute basis".

In my view, article 33.6 has absolutely no relevance to the circumstances that would cause an employee in the normal course of his run to layover. In the grievor's circumstance the Company neither required nor requested the grievor to engage in a layover. Rather, the requirement for a layover arose because of the unanticipated rock slide that prevented the grievor from completing his normal run. In short, the requirement for the layover was part of the overall delay beyond the grievor's control and for which he was entitled to be paid "on an actual minute to minute basis".

As a result of the foregoing the grievance succeeds and the grievor should be compensated for the eight hours pay withheld by the Company.

(signed) DAVID H. KATES
ARBITRATOR