CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1464

Heard at Montreal, Tuesday, February 11, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:

Concerns the difference in mileage wages paid to Mr. B. MacFarlane, Calgary–Golden to Revelstoke, British Columbia, November 2nd and 3rd, 1984, and return to Calgary and that amount he would have worked and been paid for his regularly assigned trips Calgary–Golden return November 2nd and 3rd, 1984.

BROTHERHOOD'S STATEMENT OF ISSUE:

On date of November 2nd, 1984, Mr. B. MacFarlane, Calgary, Alberta, was dispatched beyond his usual destination point of Golden, British Columbia, to Revelstoke, which is approximately 105 miles beyond Golden, he was placed on lay over which was not normal and was returned to Calgary, November 3rd, 1984, too late to take out his regular route on Saturday, November 3rd, 1984.

The Union's position is that mileage rated vehicleman B. MacFarlane, was instructed – directed to go beyond Golden, British Columbia, to Revelstoke, and that he should be paid the difference between the miles he worked (540) and the amount of miles he would have worked for the two trips Calgary–Golden for November 2nd and 3rd (660) miles or 120 miles.

The Company's position is that they are declining the claim on the basis that there is no evidence supporting the claim.

The Union's claim is for 120 miles in the name of B. MacFarlane, for November 2nd and 3rd, 1984.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

N. W. Fosbery	– Director Labour Relations, CPET, Toronto
B. D. Neill	– Director Human Resources, CPET, Toronto
B. Bennett	– Human Resources Officer, CanPar, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
J. Crabb	– Vice-General Chairman, Toronto
G. Moore	– Vice-General Chairman, Moose Jaw

M. Gauthier – Vice-General Chairman, Montreal
J. Bechtel – Vice-General Chairman, Cambridge
M. Flynn – Vice-General Chairman, Vancouver

AWARD OF THE ARBITRATOR

An unchallenged labour relations proposition dictates that an employee should not be paid for hours not worked unless there is contained in the collective agreement a provision that allows for such payment.

In the grievor's case his originally scheduled Calgary–Golden return run for November 2nd, 1984 was extended to include Revelstoke, B.C. As a result of the Company's direction increasing his regular run the grievor arrived back in Calgary too late to pick up his regular bulletined position for November 3, 1984. He was paid accordingly for the extended run. The grievor, however, claimed compensation for the difference between the monies paid for the extended run and the monies lost with respect to his regularly bulletined run.

The Trade Union relied on article 7.3.7 (1) of the collective agreement which reads 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.

Of course, the grievor's regular bulletined run for November 3, 1984 was not abolished. It was obviously carried out by an employee who was available to accept the run. Accordingly, the four day notice contingency contained in article 7.3.7 (1) has no relevance to the grievor's particular circumstance.

This is not to say that the grievor has not been prejudiced. It is my concern, however, that the complaint the grievor is making has no basis for satisfaction under the terms of the collective agreement as presently framed.

The grievor was clearly at the discretion of the Company when it directed him to do the extended run at a substantial loss to his own income. Unfortunately the redress Mr. MacFarlane seeks cannot be achieved through the grievance procedure.

Insofar as the grievor's claim for layover time on a minute to minute basis is concerned, I am satisfied that article 33.7 of the collective agreement has no relevance to the circumstances of this case. Unlike the situation in **CROA 1437** the grievor's requirement to layover was not caused by a supervening incident (such as a rock slide in that instance) that was beyond his control but was a deliberate, intended result of the Company's decision to extend his normal run. In that regard his layover was a result of the Company's "request" as provided in articles 33.6 and 33.8 of the collective agreement. Consequently, the grievor was properly treated with respect to his layover.

For all the foregoing reasons the grievance is denied.

Before leaving this case I wish the record to show that the Company raised "a point of order" at the outset of these proceedings indicating the Trade Union's refusal to outline the section or sections of the collective agreement it intended to rely upon was not in accordance with article 8 of the CROA Memorandum of Agreement. I make no definitive statement with respect to the validity of the Company's "point of order" other than to note for future purposes that the Trade Union acts at its peril should it continue its alleged refusal to abide by the rules of the CROA Memorandum of Agreement.

(signed) DAVID H. KATES
ARBITRATOR