

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2126

Heard at Montreal, Wednesday, 13 March 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Expense forms and overtime tickets for lost wages submitted by Mr. D.C. MacDonald, Employee No. 608616.

BROTHERHOOD'S STATEMENT OF ISSUE:

At a seniority meeting held on August 23, 1989, for the former Smiths Falls Division, it was agreed that employees affected by the cancellation of Bulletin No. 8 would be compensated for expenses they incurred. As a result of the agreement made, Mr. C.P. Fraser, Employee No. 631929, who had submitted forms for expenses incurred by him, had his claim paid without any unnecessary delay. Yet, Mr. MacDonald, who had submitted expense forms and overtime tickets for lost wages, had his claim rejected.

The Union contends that since an agreement was made to compensate all employees affected by the cancellation of Bulletin No. 8, that all employees receive just treatment.

The Union requests that Mr. D.C. MacDonald be compensated in the amount of \$1,994.72, for all expenses incurred by him (travelling allowance, lost wages, etc.) as a result of the cancellation of Bulletin No. 8, as per forms submitted by him.

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

FOR THE BROTHERHOOD:

(SGD.) L. M. DIMASSIMO

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. P. Egan – Assistant Supervisor, Labour Relations, Toronto
D. T. Cooke – Labour Relations Officer, Montreal
H. B. Butterworth – Assistant Supervisor, Labour Relations, Toronto

And on behalf of the Brotherhood:

L. DiMassimo – System Federation General Chairman, Ottawa
J. J. Kruk – General Chairman, Eastern Region, Sudbury

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that Bulletin No. 8 was cancelled as a result of employee and union complaints respecting possible irregularities in respect of it. I am satisfied that in these circumstances the cancellation of the bulletin was effected for valid business purposes and that, to the extent that it was prompted by union and employee concerns, its cancellation cannot be the basis of a successful grievance.

The Brotherhood further complains that Mr. MacDonald was not paid for expenses lost, as was Mr. C.P. Fraser, who was also affected by the cancellation of the bulletin. While the Arbitrator accepts that the employees were given to understand that persons adversely affected by the cancellation of the bulletin would be compensated, the evidence falls short of establishing that Mr. MacDonald was affected in the same way as Mr. Fraser. It is common ground that Mr. Fraser relocated as a result of a successful bid on a prior bulletin, which was awarded to him on Bulletin No. 8. In his case the cancellation of Bulletin No. 8 forced a return to his prior position which, because of his relocation, caused him to incur increased travel expenses. The same cannot be said of Mr. MacDonald. While he bid on Bulletin No. 8, he did not relocate prior to its cancellation. In the result, he continued to travel from his place of residence in Avonmore to his existing job as a Track Maintenance Foreman at Bedell, Ontario. In the result, no injurious reliance is demonstrated in respect of Mr. MacDonald. It may be added, moreover, that as the bulletin was cancelled substantially in advance of its expiry, it is not clear that Mr. MacDonald would, in the end, have been the senior qualified applicant. Even if that were established, given that the Company cancelled the bulletin for reasons which are not in violation of the Collective Agreement, the grievor can have no good claim either for travel expenses or for overtime wages earned by the incumbent employee who retained the position in question.

For the foregoing reasons the grievance must be dismissed.

March 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR