

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2266

Heard at Montreal, Wednesday, 15 July 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim by Mr. W.W. Plato, Work Equipment Helper, for out-of-pocket meal expenses incurred on March 5-9, March 12-16 and March 19-22, 1990, and the differential accommodation costs between MacLean's Motel in Capreol, Ontario, and the Journey's End Motel in Sudbury for the evenings of March 5-8, 1990.

JOINT STATEMENT OF ISSUE:

As a result of displacement by a senior employee, the grievor, a Machine Operator Group II from Belleville, Ontario, exercised his seniority rights by filling a temporary vacancy as Work Equipment Helper in Capreol, Ontario. While in Capreol, the grievor was advised by the Company to stay at batching facilities provided at MacLean's Motel.

The Brotherhood contends: **1)** That on the nights of March 5-8, 1990, the batching facilities were full at MacLean's Motel and the grievor decided to stay elsewhere. **2)** That the Company violated Article 22 of Agreement 10.1 by refusing to pay expenses that were necessarily incurred by the grievor. **3)** That the sanitary conditions at the MacLean's Motel were such that the grievor was justified in seeking more suitable accommodation elsewhere. **4)** That the members of the BMW bargaining unit, when required by the Company to stay at a specified motel, should be entitled to the same quality of accommodation as Company supervisors.

The Brotherhood requests that Mr. Plato be compensated for all expenses incurred as a result of the time that he worked in Capreol. The Company denies the Brotherhood's contentions and declines payment.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. M. BOYLE
for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. S. Hughes – System Labour Relations Officer, Montreal
R. Lecavalier – Counsel, Montreal
D. C. St. Cyr – Manager, Labour Relations, Montreal
D. C. Gignac – System Labour Relations Officer, Montreal
N. K. Colasimone – General Supervisor, Repair Facilities, Capreol

And on behalf of the Brotherhood:

D. A. Brown – General Counsel, Ottawa
R. A. Bowden – System Federation General Chairman, Ottawa
P. Davidson – Counsel, Ottawa
J. Rioux – General Chairman, Grimsby

A. Trudel

– General Chairman, Chomedy

AWARD OF THE ARBITRATOR

It is apparent to the Arbitrator that the Company undertook to a number of employees, including Mr. Plato, that it would pay for the cost of their accommodation at the MacLean's Motel in Capreol for the period of their assignment to that location. The evidence discloses the Mr. Plato in fact stayed at two other motels in the area. It is unclear whether he did so in the belief that the rooms which had been arranged for on a prepaid basis by the Company were in fact full, or partly because of the quality of the accommodation.

The Arbitrator is satisfied that the details of the grievor's motivation are immaterial. The substance of the Company's undertaking to Mr. Plato was that accommodation, to a certain price, would be provided to him in Capreol. While it is true that he did not stay at the motel which the Company directed him to utilize, in the circumstances it does not appear unreasonable for the Company to reimburse Mr. Plato in an amount equivalent to the expense which it would have incurred if he had stayed at the MacLean's Motel. That is particularly so where there is no evidence to establish that the grievor's choice of facility in any way prejudiced the Company's relationship with the MacLean's Motel or put it to any additional expense.

I am not persuaded, however, that the grievor's claim for meal allowance can be treated on the same basis. It would appear, on the balance of probabilities from the material before the Arbitrator, that additional rooms beyond those which had been prepaid by the Company were vacant and available within the MacLean's Motel at the time the grievor opted to stay elsewhere. By making that decision he voluntarily waived the opportunity to make use of the cooking facilities at the motel specified by the Company, in a manner which departed from the fundamental understanding between himself and the employer. I cannot, therefore, see any basis upon which his claim for meal allowance should be allowed.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be compensated for the expenses which he incurred for overnight accommodation on all of the dates identified within the statement of dispute, at the rate which would then have been charged to him by the MacLean's Motel, subject to an adjustment of the payments made to him, without prejudice, in accordance with a letter addressed to him by Mr. N.K. Colasimone, the Manager, Repair Facility, of 23 March, 1990. On the limited evidence before me, I am not prepared to make any finding with respect to the claim of the Brotherhood that the facilities of the MacLean's Motel were unsanitary. Nor can I sustain, unsupported by any reference to the collective agreement, the Brotherhood's claim that employees are entitled to the same quality of accommodation as is provided to Company supervisors or managers.

July 17, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR