

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2327

Heard at Montreal, Wednesday, 10 February 1993

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim and grievance of Conductor G.J. Peterson and Trainman T.B. Moore of Brandon, Manitoba.

JOINT STATEMENT OF ISSUE:

On January 19, 1991 at 0120 hours, while enroute from Brandon, Manitoba to Estevan, Saskatchewan, Conductor Peterson advised the Winnipeg RTC Office that he expected to be at his objective terminal within 10 hours of on-duty time.

The Winnipeg RTC noted this request and in due course instructed Conductor Peterson and Trainman Moore to yard their train at Napinka, an intermediate terminal, for a relief crew from Brandon. Conductor Peterson's crew were then deadheaded back to Brandon by highway.

Conductor Peterson and Trainman Moore were compensated for this tour of duty as per the provisions of Article 11(c)(1) of their Collective Agreement.

The Union contends that Conductor Peterson and Trainman Moore are entitled to an additional payment of 85 miles each, the distance from Napinka to Estevan, and requests the payment of these claims. The Company has declined the Union's request.

FOR THE UNION:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. J. GREEN
GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

M. E. Keiran –
Manager, Labour Relations, Vancouver
P. C. Mahoney – Assistant Superintendent, Lakehead Division
R. N. Hunt – Labour Relations Officer, Montreal

And on behalf of the Union:

L. O. Schillaci – General Chairman, Calgary
B. L. McLafferty – Vice-General Chairman, Moose Jaw
B. Marcolini – National President, UTU-Canada, Ottawa

AWARD OF THE ARBITRATOR

The narrow issue to be resolved in this dispute is whether, as the Company maintains, Conductor Peterson and Trainman Moore advised the Winnipeg rail traffic controller that they intended to book rest at the conclusion of their ten hours of on duty time. The Arbitrator can see nothing in the evidence to sustain that conclusion. On the contrary, the preponderance of the evidence suggests that the crew members communicated to the rail traffic controller their concern that they be given every consideration in reducing their work load enroute, because of heavy headwinds which they were encountering. Such a request, and its accommodation, would have been in compliance with article 9, clause (4) of the collective agreement which provides as follows:

9(4) Where it becomes necessary, arrangements will be made to have a reduced crew complete their tour of duty within 10 hours on duty which may require the discontinuance of work enroute, changing meets and the prompt yarding of the train. When such arrangements are made, the Dispatcher will so advise all other employees having authority over the operation of the train, i.e. yard personnel at objective terminal, other Dispatchers, etc. When, notwithstanding the arrangement, the reduced crew is unable to complete their tour of duty within 10 hours, the members of the crew may book rest after 10 hours on duty. (See Appendix B-10)

The Company suggests that if in fact the grievors did not book rest, their straightaway service could have been changed to turnaround service by virtue of unforeseen circumstances, in accordance with article 11(c)(2) of the collective agreement. The facts of the instant case, however, are different from those disclosed in **CROA 1317**, where another company invoked a similar article under its collective agreement. There is no evidence before me of any intention or action on the part of the Company to invoke or apply article 11(c)(2), assuming, without finding, that it could have been invoked in the circumstances. The employer chose to compensate the grievors in accordance with article 11(c)(1) of the collective agreement, which applies only when a trainman books rest. For the reasons touched upon above, that fact is not established in the evidence.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that Conductor Peterson and Trainman Moore be compensated forthwith for the additional eighty-five miles claimed.

February 12, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR