

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2400

Heard at Montreal, Wednesday, 13 October 1993

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION - CANADA]**

DISPUTE:

Algoma Division Conductors submitted wage claims pursuant to the UTU Collective Agreement, Article 11(1)(4) and the Company reduced the amount of time claimed on the tickets.

JOINT STATEMENT OF ISSUE:

By Bulletins C-079 and C-079 Correction, the Company advised crews on the Algoma division that their off-duty time, for pay purposes, at White River would be at the station.

These bulletins also instructed these crews "... to fax their names, employee numbers, and the call they require from the White River Resthouse to the clerks in Chapleau". In the event the fax was not working, crews were advised that this information was to be forwarded by telephone. This information was required to enable the crew clerks to give employees timely calls for their trains.

Local Chairman D. Warren, by means of a posted instruction instructed these crews, in part, as follows:

1. Crews arriving at White River are required to fax in their off duty time at the station. For the purposes of complying with the bulletins, the off duty time at the station, should be shown on that fax form.
2. When submitting the wage claims all time occupied performing the required duties at the final terminal should be noted. This would include the time walking to the bunkhouse and faxing information to Chapleau.
3. The off duty time on the ticket should be consistent with the confirmation received, for performing bulletined duties, from the Fax Machine or Crew Clerk at the bunkhouse.
4. The portion of the wage claim in dispute should be itemized on your ticket. This would be the difference between the time off duty shown at the station and the time shown off duty shown on the wage claim.

The disputed time was deducted from the wage claims and the undisputed portion of the wage claims were paid.

The UTU contends that the wage claims were submitted pursuant to Article 11(1)(4) of the collective agreement which states "... when trainmen are held for any other service they will be paid for all time held", and should be paid.

The Company declined to pay the disputed portion of those wage claims and states that the train crews were not held for service and accordingly Article 11(1)(4) does not apply.

FOR THE UNION:
(SGD.) D. A. WARREN
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) J. B. CAMPBELL
GENERAL MANAGER, OPERATIONS & MAINTENANCE, IFS

There appeared on behalf of the Company:

F. O. Peters - Managers, Labour Relations, Montreal
C. Bartly - Labour Relations Officer, Toronto

And on behalf of the Union:

D. A. Warren - General Chairperson, Toronto
B. MacLeod - Local Chairperson, Chapleau

AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are not disputed. White River is the away from home terminal for crews home terminalled at Chapleau. Until the mid 1980's crews arriving from Chapleau and staying in the bunkhouse would give information as to their room location in the bunkhouse to a clerk stationed at White River. This facilitated the calling of the crew for their next tour of duty. After the removal of the clerk at White River, in or about 1985, crews were required to use a telephone in the bunkhouse to advise Company crew clerks as to their room location, for the purposes of their subsequent call. It appears that, on occasion, crews were delayed in getting through on the telephone to the crew clerks. To resolve that problem, effective May 7, 1992, the Company installed a fax machine at the White River bunkhouse, along with special forms, to be used by crews to communicate with the crew clerks with respect to their room location at the bunkhouse. This was intended to facilitate calling, it being understood that employees could still utilize the telephone in the event that the fax machine should malfunction.

Prior to the installation of the fax machine, for what appears to be a period of some seven years, the Company paid the claims of crews for terminal time for the time required to walk from the terminal to the bunkhouse, as well as the time needed to telephone the crew clerk to advise of the employee's room location. With the installation of the fax machine, by means of a series of bulletins in late May and early June of 1992, the Company took the position that compensable final terminal time is to be considered ended when the required duties are completed at the station, and that final terminal time would not include the time taken to walk to the bunkhouse or expended in contacting the Chapleau crew clerk, either by fax, or in the event of a malfunction, by telephone.

The material before the Arbitrator suggests that the payment of terminal time for communicating with crew clerks at away from home terminals varies in different locations. It is conceded, for example, that in Toronto a special arrangement has been agreed to with respect to circumstances which justify the payment of terminal time for time expended after departure from the station. It also appears undisputed that at Cartier, another away from home terminal for Chapleau crews, claims such as those which are the subject of this grievance have been paid, although the time involved at Cartier appears to be somewhat less.

In the Arbitrator's view this is not a case to be resolved upon a determination of principle as to whether the time expended by employees in communicating their whereabouts to the crew clerk at Chapleau is or is not compensable service for the purposes of the collective agreement. It is, I think, sufficient to conclude that the Company must be taken to have agreed that for the limited purposes of service at White River, such time is to be compensable. That, it seems to me, is the only equitable interpretation to be applied. The material before the Arbitrator establishes that the practice of compensating employees for the time expended in proceeding to the bunkhouse and notifying the Chapleau crew clerk of their room location by telephone was treated as compensable for many years prior to the introduction of the fax machine. The Union clearly entered the current collective agreement, effective January 1, 1992 in the belief that article 11(l)(4) of the collective agreement would continue to be so applied at White River, at least for the duration of the current collective agreement. In the circumstances I am compelled to conclude that the parties must be taken to have intended the continuation of the well-established practice of paying terminal time to employees laying over at White River up to the point of communication with the crew clerk at Chapleau with respect to their room location. For the purposes of clarity, the Arbitrator's conclusions are based on the undisputed practice at White River, and should not be taken to have any broader application in circumstances or locations where the facts might be otherwise.

For the foregoing reasons the grievance is allowed. The Arbitrator directs the Company to pay all wage claims which are the subject of this grievance, as well as all other claims made in relation to final terminal time at White River during the currency of the collective agreement.

October 15, 1993

(sgd.) MICHEL G. PICHER
ARBITRATOR