

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2492

Heard in Calgary, Wednesday, 15 June 1994

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Employee Rick MacLean was issued ten (10) demerits for absenteeism on June 21st, 1993 and was not paid three (3) hours for a call in associated with the interview held in connection with the charge of absenteeism.

EX PARTE STATEMENT OF ISSUE:

The Union contends that the demerits were inappropriate as the employee was unassigned and on a call in basis, and was not on a regular schedule.

The Company contends the employee must be available for whatever work whenever called.

The Union asserts that the employee was not given appropriate notice of the interview under article 8, and that in any event, three (3) of the absentee slips used at the interview were untimely under article 8.

The Union requested that the ten (10) demerits be removed and the grievor's record be made whole, and that he be compensated for the time taken for the interview on the basis of a three (3) hour call in.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) D. J. DUNSTER
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

B. F. Weinert – Director, Labour Relations, Toronto
W. B. Smith – Area Manager, Alberta

And on behalf of the Union:

D. E. Graham – Vice-President, Calgary
K. Greasley – Assistant Division Vice-President, Calgary
R. MacLean – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that the grievor did fail to respond to a call for work on several occasions. His failure to respond was in derogation of his obligations as a laid-off employee who is being paid Job Security benefits, on the understanding that he is to be available for work.

Nor can the Arbitrator sustain the procedural claims raised by the Union, in respect of alleged violations of article 8 and the entitlement of the grievor to call in pay for the time of his disciplinary investigation. As related in the prior award of this Arbitrator in an **ad hoc** arbitration between these same parties (**grievance re Glen Warner, Kingston Terminal**, award dated 22 February 1989) the collective agreement is silent as to the entitlement of an employee to wages in the circumstances disclosed. At page 2 of that award the following appears:

As it appears that it is a relatively common practice for employees to attend at investigation hearings during non-working hours, and payment for such time has not been negotiated within the terms of the collective agreement, the Arbitrator makes no order with respect to the request for the payment of wages relating to the time of the disciplinary investigation.

In my view those principles apply in the case at hand.

Additionally, I can find no basis to sustain the allegation of the Union in respect of the alleged violation of article 8 of the collective agreement, in that the notice provided to Mr. MacLean in respect of the interview conducted on June 17, 1993 was not given to him twenty-four hours in advance, but in fact was provided on the same date as the interview. There is no dispute that that is what occurred. It is also clear, however, that no objection was raised in that regard at the time by the grievor or by his Union representative. It would, in my view, be inequitable to allow the Union to now succeed, approximately one year later, on the pleading of a technical point not raised as an objection at the time. In the circumstances I am prepared to conclude that the Union waived any right to object to the sufficiency of the notice provided.

For all of the foregoing reasons the grievance is dismissed.

June 21, 1994

(Sgd.) MICHEL G. PICHER
ARBITRATOR