

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2631

Heard in Calgary, Thursday, 11 May 1995

concerning

CANADIAN PACIFIC RAILWAY LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Claim of Conductor D.W. Erz, Moose Jaw, Saskatchewan, for a minimum day at through freight rates.

JOINT STATEMENT OF ISSUE:

Conductor Erz attended Minimum Standards Qualifications classes in accordance with the Memorandum of Agreement concerning "Employees In Training In Order To Qualify In Accordance With The Railway Employee Qualification Standards Regulations" and completed his training on March 9, 1991 at 1700 hours. Subsequently, Mr. Erz booked 12 hours personal rest.

While Conductor Erz was on rest his regular car (crew), with a spare conductor working his vacancy, was called for work and commenced a tour of duty on March 9, 1991 at 2210 hours. This crew (car) then worked a tour of duty back to Moose Jaw on March 10. Conductor Erz submitted a claim for 100 miles at through freight rates for the March 10th return trip of his car.

The Union contends that Conductor Erz must be considered as having been kept off the working list by the Corporation on the final day of training, in view of the fact that the provisions of the Mandatory Rest legislation would have been applicable to the situation and Conductor Erz could not have worked his trip. Therefore, Clause (f) of the Special Agreement does apply.

Clause (f) of the Special Agreement specifically states that payment for lost tours of duty will be paid only when an employee is withheld for training by the Company. Notwithstanding the provisions of Mandatory Time Off Duty Regulations, Mr. Erz missed both tours of duty as a consequence of personal rest booked by himself and the Company properly declined payment of his wage claim.

FOR THE COUNCIL:

(SGD.) L. O SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. E. KEIRAN
FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

L. Guenther – Labour Relations Officer, Vancouver
R. G. Weir – Manager, Operations, Calgary

And on behalf of the Council:

D. Finnon – Secretary, G.C.A., Saskatoon
J. K. Jeffries – Vice-General Chairman, Cranbrook
P. Burke – Vice-President, UTU (Ret'd), Calgary

AWARD OF THE ARBITRATOR

The evidence establishes that Conductor Erz completed a three day course of study sponsored by the Company. The three days in question involved eight hours each, and concluded at 17:00 on April 9, 1991. It does not appear disputed that at that point in time the grievor booked 12 hours' personal rest and was, in any event, precluded from returning to duty without six hours' rest, subject to a two hour call, as mandated by Canadian Transport Commission Order R-40386 (MTOD). It is not disputed that booking rest caused the grievor to miss a tour of duty with his regular crew, which was called to work for 22:10 hours on April 9, 1991.

The Union makes a wage claim on behalf of the grievor under the provisions of clause (f) of the Memorandum of Agreement made between the parties in relation to the Railway Employee Qualifications Standards Regulations which provides as follow:

(f) In the event an employee is removed from the working list on a day(s) preceding a training course or is kept off the working list by the Company on a day(s) following the course due to attendance at such course and as a direct result thereof misses a tour(s) of duty which commence work on such days, he will be paid a minimum day at the rate of the position and class of service in which regularly employed for each tour of duty lost.

The Union submits that the Company, in effect, kept the grievor off the working list on April 9, and that he is therefore entitled to be paid a minimum day at the appropriate rate, as provided in paragraph (f) of the memorandum of agreement.

The Arbitrator has substantial difficulty with that submission. It is true, of course, that the Company determined the scheduling of the training course which the grievor was required to attend. As the Union's representative submits, the decision to establish an eight hour course for the third day of the training, April 9, 1991, necessarily triggered the application of the MTOD restrictions, so that the grievor could not be called before 23:00 hours for service at 01:00 on the 10th. While the Arbitrator must agree that that is a necessary consequence of the events as they unfolded, to so conclude is not, in my view, tantamount to finding that the Company made a decision to keep Conductor Erz off the working list in the sense contemplated by paragraph (f). As the Company's representative submits, that paragraph contemplates the need to hold an employee from his or her regular tour or duty, either before or after a training course, because of the time of the course's availability.

That is not what transpired in the case at hand. As the facts reflect, the grievor's inability to work the tour of duty assigned to his regular crew at 22:10 hours on April 9, 1991 was the result of his own decision to book rest and, inevitably, the law of the land as expressed in the MTOD. It is, in the Arbitrator's view, an insupportable stretch of logic to submit that by scheduling the course as it did, for a substantial number of employees, of whom the grievor was only one, the Company effectively implemented a decision to keep Conductor Erz off the working list in the sense contemplated by paragraph (f) of the memorandum of agreement. That is not what transpired. Nor, in the Arbitrator's view, is there any unfairness or hardship visited upon the employee who must, as a professional within the transportation industry, comply with federal laws and regulations, both in respect of training and mandatory rest.

In the result, no violation of the Memorandum of Agreement, nor of any other right of the grievor, is disclosed. For these reasons the grievance must be dismissed.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR