CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2673

Heard in Calgary, Thursday, 16 November 1995

concerning

INTERLINK FREIGHT SYSTEMS

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Winnipeg based sleeper team R. Ellison/R. Senuik, when working west of the Manitoba/Ontario border, are not paid Inter-Provincial team rate. The Union argues on behalf of the teams in Western Canada, if they do not cross the Ontario/Manitoba border, they must be compensated at either the Intra or Inter-Provincial rates.

UNION'S STATEMENT OF ISSUE:

The Company is paying all sleeper teams, who operate in Western Canada and hold a spareboard bulletin, the transcontinental team rates, rather than the intra or inter-provincial team rates.

The collective agreement provides that when a sleeper team does not cross the Manitoba/Ontario border, it must be compensated at the inter or intra-provincial 1992 rates, as per article 33.23.14 of the 1994 collective agreement.

The Company argued that they had an agreement that originated in 1992, and was carried through to 1993 that allows them to pay the transcontinental rates to sleeper teams operating in Western Canada on the unassigned spareboard. The Union doesn't accept that argument as being valid.

In 1994 the collective agreement was renegotiated because of the employee buy out. The Company did not provide any details on the alleged understanding nor did they ask that that understanding be included in the amended agreement. The Union argues that, because the Company did not avail itself of the opportunity to negotiate the alleged understanding into the collective agreement, it cannot rely on it today. The Union requested that sleeper teams be compensated in accordance with article 33.23.14 of the agreement that came into effect on September 26, 1994.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) D. E. GRAHAM
DIVISION VICE-PESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Employee Relations, Toronto

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
D. E. Graham	– Division Vice-President, Winnipeg

AWARD OF THE ARBITRATOR

The instant grievance relates to the status to be attributed to an understanding between the parties in respect of the payment of sleeper teams in the wake of the decision of this Office in **CROA 2586**. In that award it was found that the parties were bound, for the purposes of their 1993 collective agreement, to an understanding reached between the parties governing the payment of sleeper teams. The award reads, in part:

> The present grievance, which emanates from Winnipeg, is understandable. The words of the collective agreement, including Appendix A governing linehaul operations, including sleeper team linehaul rates, would be literally interpreted to limit the payment of 35.055 cents per mile, plus 3%, to transcontinental runs which involve crossing the Manitoba/Ontario border. The Arbitrator is satisfied, however, that a different understanding was reached between the parties, and carried over into the operation of the sleeper team linehaul rates found in Appendix A to the collective agreement. That understanding reflects the reality that better than 80% of the runs worked by sleeper team linehaul drivers are on transcontinental routes which do cross the Manitoba/Ontario border. With two exceptions, involving routes between Vancouver and Golden, B.C. as well as Calgary and Kamloops, the parties proceeded on the understanding that sleeper team linehaul rates payable to transcontinental teams under paragraph a) appearing on page 92 of the collective agreement would be paid to sleeper teams working transcontinental routes, being either the Trans-Canada Highway or a designated parallel route in the United States, even though they might not cross the Manitoba/Ontario border on a given assignment.
>
> In the result, the Arbitrator is satisfied that the position advanced by the Company is consistent with the understanding reached between the parties, which originated in 1992 and carried forward into the administration of the collective agreement after January 1, 1993. For these reasons the grievance must be dismissed.

The instant case raises a different issue. The Union submits that whatever effect the understanding governing the 1993 collective agreement may have had, that understanding cannot be said to have continued forward into the current collective agreement. In the Union's submission the situation is analogous to one of estoppel, whereby the Union is entitled to revert to the strict application of the language of the collective agreement once it has given appropriate notice to the Employer that it will no longer be bound by the parallel agreement or undertaking previously made with the Employer.

The record discloses that the parties moved forward to the negotiation of a new collective agreement, reaching a tentative understanding on the terms of their agreement on April 17, 1994. The agreement, however, was not finalized in an executed form until September of 1994, at which time the conditions for the establishment of the new employer were fully satisfied. The Union submits that the instant grievance, filed in November of 1993, should be taken as notice to the Employer, in advance of the making of the current collective agreement, that the Union would no longer be bound by the previous understanding in respect of sleeper teams. At the very least, it submits, when the grievance was discussed at the national level, on December 14, 1993, the Employer must be taken to have been on notice that the agreement previously entered into, which was the deciding element in **CROA 2586**, was no longer to continue, unless it was specifically bargained into the terms of the subsequent collective agreement.

In the Arbitrator's view the Union's position is well founded. As is evident from the text of **CROA 2586**, the strict wording of the collective agreement is consistent with the interpretation now advanced by the Union as regards the payment of sleeper teams in Western Canada. In that regard the language of the agreement is unequivocal. It provides, in respect of the payment at the rate for transcontinental teams that "... to be applicable the team must cross the Manitoba/Ontario border going east or west or the designated route." As reflected in **CROA 2586**, that language was qualified or limited by the separate understanding reached between the parties, an understanding which clearly applied during the term of the 1993 collective agreement. However, with the filing of the instant grievance prior to the negotiation of the current agreement, a position communicated to the Employer at the national level in December of 1993, the Company knew, or reasonably should have known, that any prior understanding in respect of waiving the strict application of the language of the collective agreement was at an end. From that point onward diligence on the part of the Employer would have required it to obtain language within the collective agreement which would have effectively extended the terms of the prior understanding. Absent any such language, however, the Arbitrator is

compelled to conclude that the interpretation now advanced by the Union is correct, and must be enforced for the purposes of the current collective agreement.

The Arbitrator therefore declares that the Company has violated the collective agreement and directs that it henceforth apply the agreement in a manner consistent with this award. The Arbitrator further directs that the Company compensate all sleeper team drivers, and relief employees in such positions, for all wages lost by reason of the Company's violation of the sleeper team payment provisions of the collective agreement.

November 20, 1995 **(signed) MICHEL G. PICHER**
ARBITRATOR