

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2678

Heard in Montreal, Tuesday, 12 December 1995

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Interpretation and Application of the basic day provision of the contract dated June 14, 1995, issued by Justice Mackenzie.

UNION'S STATEMENT OF ISSUE:

On September 11, 12 and 13 the Union met with representatives from VIA Rail concerning the interpretation and application of the national contract issued by Justice Mackenzie in accordance with the back to work legislation ordered by the Canadian government.

At this time the Corporation stated to the Union its interpretation of the basic day provision specifically in regards to less than 3 hours off duty time at the away from home terminal. The Corporation stated that if a crew has less than 3 hours' off duty time at the away from home terminal, then the principle established by Justice Mackenzie of "on duty time 4 hours but less than 6 hours, the crew will be credited with 6 hours towards the eight week averaging period", does not apply. The crew would only be credited with actual time on duty for each trip plus the 3 hours or less at the away from home terminal time.

The Union disagrees with the Corporation's interpretation and application. The Union's position is, a crew will be credited in accordance with principle of a basic day established by Justice Mackenzie. A crew on duty between 4-6 hours will be credited with 6 hours and a crew on duty between 6-8 hours will be credited with 8 hours, etc., as stated in the award.

The Corporation disagrees with the Union.

FOR THE UNION:

(SGD.) N. MATTHEWSON
FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Corporation:

K. Taylor – Senior Advisor and Negotiator, Labour Relations, Montreal
J. Ouellet – Senior Labour Relations Officer, Montreal

And on behalf of the Union:

H. Caley – Counsel, Toronto
M. P. Gregotski – General Chairman, Fort Erie
G. F. Binsfeld – Secretary/Treasurer, GCA, Fort Erie
R. Skelton – Local Chairperson, Toronto

PRELIMINARY AWARD OF THE ARBITRATOR

The parties are disagreed as to the calculation of the basic day. The basic day is dealt with in the following terms of article C of the collective agreement language handed down by the Mediation-Arbitration Commission chaired by Mr. Justice Mackenzie:

Basic Day

Effective with the Fall 1995 change of timetable.

1. A minimum basic day shall be established in accordance with the tour of duty. In the calculation of this principle, the following shall apply:

Time On Duty	Basic Day
(a) 0'00" - 4 hours	4 hours
(b) 4'01" - 6 hours	6 hours
(c) 6'01" - 8 hours	8 hours
(d) over 8 hours	Actual hours

2. At locations where the layover time is three hours or less, employees shall be considered as being on continuous duty in the computation of the 160 hour basic four-week period. Such time will be considered as "Held" time and not used in the calculation of hours for Transport Canada's maximum hours of service on duty.

It appears that the parties are disagreed as to the manner of calculating an employee's basic day where he or she has layover time of three hours or less.

For the reasons related in **CROA 2676**, the Arbitrator is satisfied that this is, *prima facie*, an issue relating to the meaning of the collective agreement, and not a dispute as to the incorporation of the Mackenzie award into the collective agreement.

Subject to the reservation expressed in **CROA 2676**, I therefore find that the grievance is arbitrable. The General Secretary is directed to list this matter for hearing on its merits.

December 15, 1995

(signed) MICHEL G. PICHER
ARBITRATOR

On Tuesday, 10 September 1996, there appeared on behalf of the Corporation:

L. Béchamp	– Counsel, Montreal
E. Houlihan	– Senior Officer, Labour Contracts, Montreal
F. Hebert	– Manager, Control Centre, Montreal

And on behalf of the Union:

H. Caley	– Counsel, Toronto
M. P. Gregotski	– General Chairman, Fort Erie
R. LeBel	– General Chairman, Quebec
G. Bird	– Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The dispute concerns the interpretation of article C of the award of Mr. Justice Mackenzie, dated June 14, 1995. The parties are disagreed as to the calculation of employee's basic day, where the employee has less than three hours' off duty time at an away-from-home terminal. The provision in question reads as follows:

Basic Day

Effective with the Fall 1995 change of timetable.

1. A minimum basic day shall be established in accordance with the tour of duty. In the calculation of this principle, the following shall apply:

Time On Duty	Basic Day
(a) 0'00" - 4 hours	4 hours

