CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2814

Heard in Montreal, Wednesday, 15 January 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Employees of Gang 123 were forced to report for duty 12 hours before the start of their shift on orders from the Company.

EX PARTE STATEMENT OF ISSUE:

The contention of the Brotherhood is that the employees on Gang 123 were in fact unjustly dealt with by the Company when they were forced to report 12 hours prior to their proper starting times.

The dates in question were May 10, May 25 and June 7, 1993.

The Brotherhood maintains that the employees were not properly compensated as per article 11.2 of Agreement 10.1 and all other applicable rules.

The Brotherhood requests that all employees on Gang 123 be compensated for all time spent travelling to the work site on orders of the Company on the dates in question.

The Company has denied the Brotherhood's contention and declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. Michaud	– Labour Relations Officer, Edmonton
J. Dixon	– Manager, Labour Relations, Edmonton
D. Lanthier	– Labour Relations Officer, Edmonton
G. Search	– Assistant Manager, Labour Relations, Toronto

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
R. F. Liberty	– System Federation General Chairman, Winnipeg
D. Brown	– Sr. Counsel, Ottawa

AWARD OF THE ARBITRATOR

It is common ground that the employees who were required to report 12 hours prior to the starting time of their tour of duty were in fact compensated for all time spent travelling to the white fleet accommodation. They reported at Grande Prairie at 6:00 p.m. on the evenings of May 10, May 25 and June 7, 1993 and were transported from there to the white fleet accommodation, arriving at approximately 8:00 to 9:00 p.m. They were then released from duty until the commencement of their shift at 4:00 a.m. the following morning.

The case, therefore, resolves itself on the Brotherhood's claim that the employees should be paid for the eight hour time period which they spent at the white fleet accommodation prior to the commencement of their shifts on the mornings of May 11, May 26 and June 8, 1993.

Assuming, without finding, that the Arbitrator has jurisdiction to resolve this issue based on the Brotherhood's claim that the employees were unjustly dealt with, a matter currently under appeal before the courts (*see* **CROA 2768**), I can find no substantial basis upon which this grievance should be allowed. It is clear that the Company was entitled to schedule the start of work at 4:00 a.m. on the Monday mornings in question, and that it had a legitimate business interest to ensure that its employees were at the remote location in sufficient time to be available for work in a reasonably rested state. While there was no doubt some inconvenience to employees who were required to spend part of their Sundays returning to Grande Prairie, sometimes from a considerable distance, that is a part of the reality of working in track maintenance service at remote locations, as has been the case for many years. The difficulty of transporting employees to and from remote locations, and housing them in white fleet accommodation is not new to these parties. In the circumstances, the Arbitrator has some difficulty with the Brotherhood's characterization of the employees as virtual prisoners of the Company. Rather, I feel compelled to conclude that the inconvenience which they experienced on the days in question is an implicit part of the contract of employment which they voluntarily accepted to perform as employees in the service of the Company at remote locations. While it is true that, as a general matter, the Company cannot dictate to employees their precise activities or whereabouts in off duty hours, so long as they do appear for work in a fit condition when scheduled, it is equally true that the Company is not under an obligation to provide continuous shuttle transportation to remote locations at the convenience of its employees, particularly where the notion of what is convenient may vary substantially from one employee to another. While each case must be determined on its individual merits, it appears clear to the Arbitrator that in the specific circumstances which obtained at Grande Prairie on the three days in question, it was entirely reasonable for the Company to schedule and transport the members of Gang 123 as it did. In the circumstances I cannot find that the individuals in question were unjustly dealt with.

For the foregoing reasons the grievance must be dismissed.

January 20, 1997

(signed) MICHEL G. PICHER
ARBITRATOR