CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3049

Heard in Calgary, Tuesday, 11 May 1999

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Mr. G. Sarrazin and other similarly affected employees.

EX PARTE STATEMENT OF ISSUE:

Mr. Sarrazin was affected by the reorganization of the Ottawa Valley Lines in October, 1996. He was on ES status until April 1997, when he was called to work on Rail Gang No. 1 at Bowker, Ontario. Because Bowker is off the grievor's basic seniority territory (BST), he submitted claims for travel and meal expenses. These were denied.

The Union contends that the Company is in violation of Section 7.3(c) of the Job Security Agreement.

The Union requests that the Company be ordered to reimburse the grievors for all losses incurred as a result of the Company's refusal to recognize as legitimate the grievors' entitlement to mileage and meal claims while working off their BST.

The Company denies the Union's contention and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. M. Andrews	– Manager, Labour Relations, Calgary
S. Samosinski	– Director, Labour Relations, Calgary
D. T. Cooke	– Director, Labour Relations, Calgary
E. J. MacIsaac	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
D. W. Brown	– Sr. Counsel, Ottawa
K. Deptuck	– Vice-President, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. McCracken	– Federation General Chairman, Ottawa
W. Brehl	– General Chairman – Pacific Region, Revelstoke
R. Terry	– Local Chairman, Lethbridge

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. The grievor's job was abolished by reason of the reorganization of the Ottawa Valley Lines in October of 1996. He then received employment security benefits until April of 1997, at which time he was compelled to work as a labourer with Rail Gang No. 1 in Bowker, Ontario. Bowker is off the grievor's basic seniority territory, and requires him to commute some 1,100 kilometres from his home on a weekly basis.

The Brotherhood submits that in the circumstances the grievor should be entitled to certain preferential expense benefits by reason of article 7.3 of the Job Security Agreement which provides as follows:

> **7.3** An employee who has ES under the provisions of this Article and is unable to hold a position in accordance with Article 7.3(a) or (b), shall be required to fill unfilled temporary or seasonal vacancies, on the Region, in positions represented by the BMWE. **Reasonable expenses will be paid for vacancies off of the BST. Reasonable expenses will also apply to temporary assignments of under 45 days on the BST.**
>
> (emphasis added)

The Brotherhood maintains that on the basis of the foregoing language the grievor should be entitled to a mileage allowance at the rate of 28 cents per kilometre as provided under clause 20.8 of the collective agreement. It further submits that Mr. Sarrazin should not be required to pay the $2.90 meal charge contemplated under clause 21.3 of the collective agreement while residing in the Company's boarding cars at Bowker. It also claims that he should be entitled to meal expenses while enroute to and from the work site during his weekly commute.

The Company has provided the grievor mileage at the rate 12.6 cents per kilometre as contemplated under clause 20.5 and Appendix B-1 of the collective agreement. It further denies that he should be entitled to be forgiven the charge for meals paid by other employees at the boarding cars, or be provided meals while commuting, a right which does not attach to other employees

The Brotherhood essentially argues that Mr. Sarrazin, as an employee compelled to move to work at Bowker to protect his employment security status, is in a position different than other employees, and that article 7.3 of the Job Security Agreement recognizes his special status. On that basis it maintains that as an individual with employment security he should be entitled to "reasonable expenses" at a more generous level than those provided to other employees generally under the terms of the collective agreement. The Company submits that there is no basis in the language of the Job Security Agreement, nor in the circumstances of Mr. Sarrazin, to justify the payment to him of expenses beyond those specifically contemplated within the terms of the collective agreement for the benefit of employees generally serving on rail gangs at remote locations such as Bowker.

It appears that the genesis for the providing of reasonable expenses as contemplated in article 7.3 is found in the decision of this Office in **CROA 2535**. In that case, which involved an earlier dispute with respect to the scope of Job Security Agreement rights, the Company undertook that employees compelled to move beyond their basic seniority territory to protect their employment security status would do so with the benefit of "reasonable expenses", an undertaking which was expressly noted by the Arbitrator. It would seem that that language then found its way into the terms of article 7.3 of the Job Security Agreement.

Upon a review of the facts at hand, and the submissions of the parties, the Arbitrator can find no basis to support the assertions of the Brotherhood, at least as they relate to the facts of the instant case. With respect to the issue of the payment of mileage, clause 20.5 and Appendix B-1 of the collective agreement, a letter of understanding dated January 11, 1996, appear to reflect the clear agreement of the parties as to the mileage rate to be paid to employees for weekend travel to and from remote locations. As regards the region where Mr. Sarrazin is located, the rate agreed for such purposes is 12.6 cents per kilometre, a rate apparently based on prevailing bus rates. The separate mileage rate of 28 cents per kilometre which the Brotherhood claims is reflected in clause 20.8 of the collective agreement. Clauses 20.4 and 20.8 of the collective agreement read as follows:

> **20.4** Employees laid off through reduction when re-engaged within one year, shall be granted free transportation to and from a place of work over the seniority territory on which formerly employed pursuant to the letter dated January 11, 1996 concerning weekend travel assistance. This provision will also apply to employees holding permanent positions who are appointed to fill positions on seasonal work gangs.

20.8 Where an automobile mileage allowance is paid, such allowance shall be 28 cents per kilometre.

It appears to the Arbitrator that the circumstances of Mr. Sarrazin would fall within, or would be closely analogous to, those of an employee holding a permanent position who is compelled to fill a position on a seasonal work gang, as contemplated in clause 20.4. By the language of that provision he would be entitled to weekend travel assistance at the rate of 12.6 cents per kilometre as contemplated within the letter of January 11, 1996, which is Appendix B-1. In that context I am persuaded by the argument of the Company to the effect that the higher rate of 28 cents per kilometre contained in clause 20.8 has historically been intended to apply to the different circumstance of an individual required to apply his or her vehicle to the service of the Company, rather than for commuting to and from a place of work. In the result, I am satisfied that the Company's interpretation with respect to reasonable expenses in relation to mileage is correct in the circumstances.

Nor can I find any meaningful basis upon which to conclude that an employee in the circumstance of Mr. Sarrazin should be forgiven the meal charge paid by all other employees who are housed in boarding cars, as expressly contemplated in clause 21.3 of the collective agreement, or receive expenses for meals while commuting. This aspect of Brotherhood's argument is perilously close to submitting that individuals who do not have employment security status are second class employees, or conversely that special privileges attach to employment security status employees. So counterintuitive a conclusion can, in my view, only be supported by clear and unequivocal language within the parties' own agreement, language which is not to be found in the material before me. I am satisfied that in the circumstances of this case "reasonable expenses" would fairly be reflective of those expenses which the parties have themselves viewed as appropriate to the circumstances of employees compelled to commute to work at a remote location on weekends, where they reside in boarding car accommodation. Nor am I satisfied that the contrary treatment in the payment of mileage to certain employees in the Atlantic Region, apparently by oversight, negates the fundamental interpretation which I am satisfied is sustained on the language of the collective agreement, read together with the terms of article 7.3 of the Job Security Agreement.

None of the foregoing conclusions must necessarily be construed to mean that in all circumstances "reasonable expenses" must mean the payment of bare minimums under specific provisions of the collective agreement. While there may be a fair presumption in that direction, there could be extraordinary circumstances attaching to the situation of a given employee which would justify some further latitude in the payment of expenses. Clearly, however, no such circumstances are demonstrated in the case of Mr. Sarrazin. For all of the foregoing reasons the grievance must be dismissed.

May 14, 1999

(signed) MICHEL G. PICHER
ARBITRATOR