

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3192

Heard in Calgary, 9 May 2001

concerning

CANPAR

and

**UNITED STEELWORKERS OF AMERICA (LOCAL 1976)
(TRANSPORTATION COMMUNICATIONS UNION)**

DISPUTE:

Request by Gord Wray (Vancouver) for bereavement pay benefits.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the above-mentioned matter on February 23, 2001. The Company denied the Union's request to settle the matter on March 5, 2001. To date the Company has denied the Union's request to settle the matter.

The Union contends that the grievor was granted a leave of absence to care for a dying relative as per article 11.3 of the collective agreement. The Union has grieved that the grievor is entitled to be paid bereavement leave benefits upon the death of his relative(s) as per article 11.4 of the collective agreement.

The Company contends that they have not violated the collective agreement and the grievor had no earnings at the time of the death(s) as he was on a leave of absence. The Company submits that payment is not warranted under the circumstances.

FOR THE UNION:

(SGD.) D. NEALE
VICE-PRESIDENT/FST

There appeared on behalf of the Company:

P. D. MacLeod

Vice-President Operations, Mississauga

And on behalf of the Union:

D. Neale

– Vice-President, Financial Secretary/Treasurer, Hamilton

A. Kane

– Governing Board Representative Western Canada, Vancouver

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT OPERATIONS

AWARD OF THE ARBITRATOR

The Union claims three days of bereavement leave on behalf of the grievor, Vancouver Driver Gord Wray, in relation to the deaths of his mother-in-law and father-in-law on January 18 and 19, 2001. The Company takes the position that the leave in question fell during a more general leave for personal reasons which had previously been granted to him, and which in fact was extended beyond the deaths of his in-laws. In that circumstance, its representative argues, the situation is analogous to a person claiming bereavement leave for a death in the family which occurs, for example, during a maternity leave or an extended sick leave. The Company submits that in those particular circumstances a bereavement leave would not be available.

The language the collective agreement governing the entitlement to bereavement leave is found in article 11.4, which reads as follows:

11.4 Upon the death of an employee's spouse (including common-law), child, parent, brother, sister, step-parent, father-in-law or mother-in-law, grandchild, or grandparent, the employee shall be entitled to 3 days bereavement leave without loss of pay provided he has not less than 6 months of cumulated compensated service. It is the intent of this Article to provide for the granting of leave from work on the occasion of a death as aforesaid, and for the payment of his regular wages for that period to the employee to whom leave is granted. Upon request the Company will grant two additional days without pay to the employee.

NOTE: The term "common-law spouse" will be interpreted to mean an individual who has maintained proved co-habitation for a period of 12 or more consecutive months.

There does not appear to be a substantial dispute with respect to the facts, although the parties are somewhat in disagreement as to the nuance to be given to them. It would appear that in late December of 2000, the grievor felt the need for a personal leave of absence. It does not appear disputed that he absented himself from work from December 28 through January 16 to deal with a number of personal issues, one of which apparently involved the terminal illness of his in-laws. The matter came to a head on January 16, when the Company contacted Mr. Wray and required evidence of his need for an extended leave of absence to care for his in-laws. That was in fact produced, and it appears agreed that as of January 16, 2001 he was released on leave to care for his in-laws. The record further discloses that upon their demise he recorded the two deaths in two separate telephone calls to the Company on or about January 19, 2001.

It appears that Mr. Wray remained off work beyond the three days of bereavement leave to which he might arguably be entitled. On January 23 and 26 he asked for and was granted extensions of his leave of absence, apparently to deal with other personal matters. When Mr. Wray sought a further extension on January 29 it was denied and he was advised that he was required to return to work. He did so only four days later, on February 2, 2001.

In approaching this dispute the Arbitrator accepts the general position of principle advanced by the Company. Where an employee is on a personal leave of absence during which a person in a relationship contemplated within article 11.4 passes away, the employee cannot claim bereavement leave on top of their ongoing personal leave, to the extent that to do so would amount to a form of duplicating benefits plainly not contemplated by the scheme of the collective agreement. Whether that circumstances arises, however, is a matter to be determined by a close examination of the facts of each case.

In the instant case if the Company had granted Mr. Wray an extended leave of absence for personal reasons, including reasons beyond the care of his in-laws, there would be little doubt but that the death of the grievor's in-laws during that period would not have occasioned the entitlement to bereavement leave. On a close scrutiny of the facts of the instant case, however, that is not the way in which matters transpired. While there was an initial leave for personal reasons, it appears quite clear to the Arbitrator that the parties agreed that, as of January 16th, the grievor's leave of absence was to care for his terminally ill in-laws. I think that implicit in the extension received on that date was an understanding that the leave in question would automatically cease with their demise. Absent evidence to the contrary, I am compelled to conclude in the circumstances that upon the death of the grievor's in-laws he could no longer be said to have been on the continued leave of absence, granted on January 16, for the sole purpose of caring for his in-laws in the latter stages of their terminal illness. It may be noted that the grievor called the Company to notify the employer of the demise of his in-laws, and that he obviously believed that for the days immediately following their death he was entitled to take the bereavement leave provided under article 11.4 of the

collective agreement. On those facts I am satisfied that the grievor was on bereavement leave on the days in question, and was entitled to bereavement leave benefits, being three days of bereavement leave without loss of pay, at that point in time. The fact that his absence was prolonged for personal reasons thereafter, by the extension of leave granted to him on January 23 through January 29 does not change the essential nature of the events surrounding the deaths of his in-laws.

The Arbitrator cannot avoid the conclusion that for the days in question the grievor was in fact absent solely for purposes of bereavement, and that that three days in question could not be said to fall during the duration of a more broadly granted leave of absence. In those circumstances the grievance must be allowed. The Arbitrator therefore directs the payment of three days of bereavement leave benefits to the grievor.

May 22, 2001

(SIGNED) MICHEL G. PICHER
ARBITRATOR