CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3410

Heard in Calgary, Tuesday, 9 March 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

A declination of a time claim submitted by Locomotive Engineer R.E. Lee of Vancouver, B.C. concerning payment for lost time for attendance at a local health and safety meeting.

UNION'S STATEMENT OF ISSUE:

On December 5, 2002, the grievor, and the Brotherhood's Health and Safety representative, attended a committee meeting, for which he submitted a claim for lost earnings.

The Company subsequently declined an ancillary claim (AD) for lost time, specifically an allowance for a hot meal (HM). In declining the claim, the Company took a position that the claim was not payable, as a provision did not exist in the collective agreement that provided that a hot meal was considered lost earnings when attending authorized meetings.

The Union contended that article 75 of the collective agreement and, further, the **Canada Labour Code** provides for payment of actual lost time when held and required to attend to Health and Safety business. In other words, the meaning of actual lost time is such that any payment made in this regard must be a duplicate of the working locomotive engineer's time return(s).

The Company has declined the Union's request.

FOR THE UNION:

(SGD.) D. E. BRUMMUND
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. Reny	– Senior Manager, Human Resources, Edmonton
S. Ziemer	– Manager, Human Resources, Vancouver
E. Blotzyl	– Superintendent, BC South Zone, Vancouver
B. Laidlaw	– Manager, Human Resources, Winnipeg
R. Dilssner	– Assistant Manager, Crew Management Centre, Edmonton

And on behalf of the Union:

D. E. Brummund	– Sr. Vice-General Chairperson, Edmonton
B. Boechler	– General Chairperson, UTU, Edmonton
R. A. Hackle	– Vice-General Chairperson, UTU, Edmonton
D. Finnson	– Vice-General Chairperson, UTU–CPR, Calgary

AWARD OF THE ARBITRATOR

This grievance concerns the interpretation and application of article 75 of the collective agreement which governs the payment of employees who, like the grievor, are held out of service for attendance at a Health & Safety meeting. The article reads, in part, as follows:

> **75.1** Locomotive engineers who, during their off-duty time, are required to attend Company investigations or who are held off work by the Company for such investigations, and locomotive engineers who are held off work on Company business on order of the proper officer, will be paid as provided in paragraphs 75.2 and 75.3.
>
> **75.2** A locomotive engineer in assigned service will be paid actual time lost. If no time is lost, pay will be allowed hour for hour for the first 8 hours in each 24 hours held computed from time required to report or to deadhead at a rate per hour of 1/8th of the daily minimum passenger rate.
>
> **75.3** Locomotive engineers in unassigned service or on the spare board will be allowed pay hour for hour for the first 8 hours in each 24 hours so held (computed from time required to report or to deadhead) on the basis of 1/8th of the daily rate applicable to the service in which usually engaged, and if they lose their turn pay will be allowed for a full day of 8 hours **or actual time lost when**

> **such time can be clearly determined**. Locomotive engineers who lose their turn will take their standing on the board as from the time they are released.
>
> When held under these provisions, employees may, as locally arranged, hold their turn on the working board. Employees will be afforded the opportunity to book up to eight (8) hours rest upon completion.
>
> (emphasis added)

It may also be noted that article 135.1 of the **Canada Labour Code** also provides for compensation for employees engaged in health and safety committee activities, as provided under any applicable collective agreement, or in accordance with the employer's policy where no collective agreement applies.

Locomotive Engineer Lee was working as an unassigned employee, on the Greater Vancouver spareboard, when he was compelled to attend a Health & Safety Committee meeting on December 5, 2002. It is not disputed that the locomotive engineer assigned in his place worked a tour of eight hours at straight time, 1.25 hours of overtime and was also paid one hour at overtime rates, being $37.24, for a hot meal claim. Under the terms of a local agreement at Vancouver, train crews can elect, as a unit, to have a hot meal at the completion at nine hours of work as provided under article 48.2 of the collective agreement or, alternatively, to forego their meal and receive in lieu an arbitrary payment of one hour at the overtime rate of pay, subject to the authorization of a transportation supervisor. That is what the crew which the grievor would otherwise have worked with elected to do.

In making his claim for the work which he missed, under the provisions of article 75.3, Locomotive Engineer Lee claimed, and was denied, the arbitrary lieu allowance for the hot meal in the amount of $37.24. The Company takes the position that arbitrary payments, such as the hot meal allowance, should not be viewed as falling within the phrase “actual time lost” as intended within the meaning of article 75.3 of the collective agreement. In that regard, by analogy, the Arbitrator is referred to the treatment of arbitrary payments for travel allowance considered in **CROA 2831**.

The Union’s representative takes a different approach. He submits that the intention of article 75.3 is to place the individual concerned in the same place that he or she would have been but for the loss of the work opportunity. In that regard he stresses that if the crew which Locomotive Engineer Lee would have worked on had elected to take a hot meal they would have worked longer, thereby receiving an additional hour or more of overtime. In that context he views the arbitrary hot meal allowance as the equivalent of an overtime payment for waiving the actual meal.

The narrow issue in the case at hand is whether the arbitrary payment received for waiving the hot meal can be characterized as “actual time lost” within the meaning of article 75.3. In approaching that issue the Arbitrator is satisfied that a purposive and liberal interpretation must be given, with due regard to the overall purpose of the article. I must agree with the Union’s representative that the arbitrary allowance paid to the crew which the grievor would otherwise have served with was time based, relating at it did to their election to waive the entitlement to a hot meal after nine hours of work,

opting instead to receive the arbitrary payment. It is, in other words, a payment for time which train crew could otherwise have elected to take. In that regard I am satisfied that it does fall within the characterization of “actual time lost” within the intention of article 75.3 of the collective agreement.

In coming to that conclusion, after careful examination of **CROA 2831**, I am satisfied that that precedent must be distinguished. At issue in **CROA 2831** was whether an arbitrary payment for travel time before going on and after coming off duty could be said to be “earnings” on a tour of duty for the purposes of holiday pay. Given the specific facts and language there under consideration the conclusion was that an arbitrary payment to time outside the tour of duty would not constitute such earnings. That is clearly a different and distinguishable circumstance from the case at hand.

For the reasons related above, I am satisfied that the hot meal allowance, which in essence is a payment in exchange for time not taken for a meal to which employees are otherwise entitled, can and must be fairly characterized as part of “actual time lost” for the purposes of article 75.3 of the collective agreement. Most fundamentally, there can be no doubt but that the grievor would have received that payment for the time which he otherwise would have worked on the tour of duty in question, but for his participation in the meeting of the Health & Safety Committee on December 5, 2002.

For all of the foregoing reasons the grievance is allowed. The Arbitrator directs that the Company pay forthwith to the grievor the sum of $37.24 as a payment relating to actual time lost on the day in question.

March 15, 2004

(signed) MICHEL G. PICHER
ARBITRATOR