CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3414

Heard in Calgary, Wednesday, 10 March 2004

concerning

CANADIAN PACIFIC RAILWAY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Calculation of Weekend Mileage Allowance.

BROTHERHOOD'S STATEMENT OF ISSUE:

In December of 2002, the Brotherhood filed a grievance challenging the Company's unilateral change to the calculation method used to determine the weekend travel allowance. Previously, employees simply claimed an amount based upon the actual distance travelled. Now, with the change, employees need not state the distance travelled, although many continue to do so. Rather, an employee is now required only to submit his point of origin and his destination. A computer program used by the Company then determines the distance travelled. In some cases, this disadvantages employees.

The Union contends that: **(1)** The Company may not unilaterally alter the method of calculation used to determine the weekend travel allowance. **(2)** This new Company policy violates Appendix B-1 of wage agreement no. 4.1 and Item 8(a) of the November 30, 2000 Memorandum of Settlement.

The Union requests that the Company be ordered **(1)** to cease its new calculation method forthwith and **(2)** to compensate all affected employees for all expenses lost as a result of this matter.

The Company denies the Union's contentions and declines the Union's requests.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

E. J. MacIsaac	– Manager, Labour Relations, Calgary
D. Guerin	– Labour Relations Officer, Calgary
M. Moran	– Labour Relations Officer, Calgary
R. Hamilton	– Manager, Labour Relations, Calgary

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. Brown	– Sr. Counsel, Ottawa
D. McCracken	– Federation General Chairman/ Secretary Treasurer, Ottawa
H. Helfenbein	– Pacific Region General Chairman,

AWARD OF THE ARBITRATOR

The Brotherhood grieves the decision of the Company to implement a new method for the calculation of the weekend travel allowance. The travel allowance is payable to employees required to work away from their homes for travel to and from their homes and work locations on weekends, in accordance with the terms of Appendix B-1 of the collective agreement. That appendix reads, in part, as follows:

Travel Assistance

As mentioned above, the means to be used to assist employees with weekend travel will vary. The determination of which means will apply in each case rests with the appropriate Company Officers. The means that may be employed are:

- Train Service
- Company vehicles
- Actual bus fares by way of tickets or passes provided by the Company
- A mileage allowance calculated using bus fares prevailing on August 1st each year. The allowance shall be as follows:

Effective 01 – Aug – 01				
Distance travelled each direction (KM)	(Pacific)	(Prairie)	(Eastern)	(Atlantic)
100	$6.50	$6.23	$7.61	$7.72
101 to 200	$20.09	$18.68	$22.83	$23.15
201 to 300	$33.48	$31.13	$38.05	$38.58
301 to 400	$46.87	$43.58	$53.27	$54.01
401 to 500	$60.26	$56.03	$68.49	$69.44
501 to 600	$73.65	$68.48	$83.71	$84.87
601 to 700	$87.04	$80.93	$98.93	$100.30
701 to 800	$100.43	$93.38	$114.15	$115.73
801 to 900	$113.82	$105.83	$129.37	$131.16
901 to 1000	$127.21	$118.28	$144.59	$146.59
1001 to 1100	$140.60	$130.73	$159.81	$162.02
1101 to 1200	$153.99	$143.18	$175.03	$177.45
1201 to 1300	$167.38	$155.63	$190.25	$192.88
1301 to 1400	$180.77	$168.08	$205.47	$208.31

– any combination of the above.

As can be seen from the foregoing the parties agreed on a system whereby the payment of the travel allowance is based on mileage for an employee utilizing his or her own vehicle, as that mileage might fall within given blocks of distance. For example, travel between 101 to 200 kilometres is payable on the Prairie Region at the rate of $18.68. An employee who claimed travel for actual mileage of 190 kilometres would fall within that block and receive the payment of $18.68, as would an employee who might claim actual mileage travelled of 110 kilometres.

The material before the Arbitrator indicates that the Company undertook an audit of its weekend travel claims. It appears that that audit compared the mileages claimed by employees with the actual road distances between the two geographic points of their travel found in certain computer programs. It would appear that certain software applications will provide shortest distance estimates for travel between two points. The

Company's audit found that in many circumstances employees' claims were for mileage in excess of the distances established within the software programs. It estimated that the difference might involve the overpayment of mileage claims, on a system basis, amounting to as much as $360,000 in excessive mileage claims.

On that basis the Company introduced its new policy whereby a computer system was utilized to determine assigned mileage distances between any two geographic points. Employees claiming travel between those points would be paid in accordance with the mileage produced on the computer system, as that mileage would fall within the distance blocks established within Appendix B-1 of the collective agreement.

The Brotherhood objects to the unilateral implementation of that system by the Company. Its representatives stress that for the period of many collective agreements, including the current collective agreement, the parties always applied the weekend mileage allowance calculation on the basis of the actual miles submitted by the employee as having been travelled in his or her personal vehicle. Simply put, the Brotherhood argues that the individuals' own measured mileage was the basis for the entire system, and that for the Company to unilaterally revert to a software application whereby notional distances are applied between geographic points, rather than the actual distance travelled by the individual, is beyond the intention of the collective agreement as developed by the parties. The Company responds, in part, that there is no specific language within the collective agreement which would foreclose the

employer's ability to implement the different system of mileage assessment and payment which emerged under its new policy.

The Arbitrator readily appreciates the difficulty which the Company attempted to address. The results of its audit would appear to confirm that there may well have been claims made by employees, and paid, which might have been of debateable validity given the various route options which might have been available to employees in their travel between a remote workplace and their home on weekends. The fact remains, however, that the approach taken by the Company is also arguably open to a degree of error. For example it may be that certain points may be more easily accessible by a system of four lane highways which, while requiring less time, may in the end involve a greater mileage distance. There may also be variances which could depend upon the point within a given municipality or location which is selected for the purposes of the arbitrary measurement used in a computer program.

In the end, the issue remains the meaning and intention of the collective agreement. As a matter of interpretation I am satisfied that the Brotherhood is correct in its submission that the use of actual mileage claims by employees has been an implicit element in the application of the block mileage formula agreed to by the parties at the bargaining table and incorporated within Appendix B-1 of the collective agreement. In agreeing to that arrangement in March of 2001 the Brotherhood plainly relied upon the Company continuing to process claims on the long established basis of the actual mileage numbers submitted by the employees concerned. While the mileage block

system might bring a greater degree of administrative facility, there was clearly no discussion or contemplation of an entirely different method of establishing distances between two geographic points. I therefore conclude that the collective agreement must be taken to have necessarily implied that the parties agreed to the continuation of the system whereby the mileage figure claimed by individual employees would be the basis of their weekend mileage allowance payment.

If I am incorrect in that interpretation of the collective agreement I am further satisfied that the Company would be estopped from unilaterally implementing the system which is the subject of this grievance. At a minimum it must be concluded that in 2001, when the Brotherhood accepted the mileage block system proposed by the Company and now incorporated into Appendix B-1, its representatives were led or allowed to believe to that the status quo, that is to say the determination of mileage on the basis of the submissions of employees themselves, would continue as it had in the past. There was then no suggestion of a change of system, and the Brotherhood fundamentally relied upon the status quo for the duration of the collective agreement, albeit with the introduction of the new mileage block system. For the Company to unilaterally introduce a new method of measuring distances travelled, effectively disregarding the claims submitted by employees and utilizing arbitrary distances generated by a computer model constituted a departure from the understanding which I am satisfied was communicated to the Brotherhood, the effect of which would prejudicially affect the rights of employees whose mileage claims might in fact be reduced by the introduction of the new system.

In the result, the grievance must be allowed. The Arbitrator finds and declares that the system of weekend mileage allowance payments established within Appendix B-1 of the collective agreement is predicated on the implicit understanding of a continuation of the long established system whereby employees submitted their own mileage travelled. The departure from that system by the Company to the computer mileage system is a violation of that provision. Alternatively, the unilateral introduction of a new system of calculating mileage by the Company is a departure from the implicit representations which led the Brotherhood to accept the mileage block system in 2001. On that basis the Company is estopped from introducing its new system, at least until such time as the parties have had the opportunity to address the matter at the bargaining table, where it appears they are now situated.

In addition to the above declarations, the Arbitrator deems it appropriate to simply retain jurisdiction with respect to any further remedy which might be appropriate in the circumstances. There is no reason to believe that the Company requires a cease and desist direction from the Arbitrator, in light of the conclusions contained herein. Should there be any dispute with respect to any compensation owing the matter may be spoken to. Most significantly, in the Arbitrator's view the Company's wish to adopt a new system, which is understandable, is now a matter for bargaining.

March 15, 2004

(signed) MICHEL G. PICHER
ARBITRATOR