

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 387

Heard at Montreal, Tuesday, November 14th, 1972

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Trainman A. B. Barrett, Calgary, for bereavement leave pay on September 24th, 25th and 26th, 1971.

JOINT STATEMENT OF ISSUE:

Trainman Barrett's father died on September 20th, 1971, at which time Trainman Barrett was working on a road trip. Trainman Barrett arrived back in Calgary on September 21st and upon his going off duty at 0905 that day booked leave of absence. He claimed three consecutive calendar days bereavement leave in respect of September 24th, 25th and 26th and 193, 157 and 163 miles as earnings lost on those days respectively. The Company declined payment of these claims on the basis that Trainman Barrett's entitlement to bereavement leave was in respect of September 22nd, 23rd and 24th, the first three consecutive calendar days immediately following the death of his father. The Union alleges that the Company, by not honoring the claims for September 24th, 25th and 26th, has violated the provisions of Article 29, Clause (f), which reads:

"Upon the death of an employee's spouse, child, parent, father-in-law or mother-in-law, an employee who has not less than six months cumulative compensated service shall be entitled to 3 consecutive calendar days bereavement leave with payment of lost earnings exclusive of overtime within such 3 days."

FOR THE EMPLOYEES:

(SGD.) R. T. O'BRIEN  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. BROMLEY  
GENERAL MANAGER, OPERATIONS &  
MAINTENANCE - PRAIRIE

There appeared on behalf of the Company:

D. Wilson	Labour Relations Assistant, C.P.Rail, Montreal
L. J. Masur	Supervisor Labour Relations, C.P.Rail, Vancouver
R. Colosimo	Manager, Labour Relations, C.P.Rail, Montreal
P. E. Timpson	Labour Relations Assistant, C.P.Rail, Vancouver

And on behalf of the Brotherhood:

R. T. O'Brien

General Chairman, U.T.U.(T) Calgary

AWARD OF THE ARBITRATOR

It is agreed that trainman Barrett was entitled to three days bereavement leave. Upon his return to Calgary, he booked absent for a period of five days. The grievor was in unassigned pool freight service and could be called for service on any day. There was, quite properly in the circumstances no question as to his booking off for a period of five days. The grievor, however, appears to have selected from the days when he was absent those three which would involve the most earnings for him.

The collective agreement, in Article 29 (f) provides for three consecutive calendar days leave "upon the death" of a person related to an employee in the manner described in the article. Such a provision certainly does not confer on an employee the right to time off with pay to suit his own convenience. It is a provision for bereavement leave, and the leave with pay must relate to the bereavement. The Company was not obliged to grant more than three days leave to the grievor although in fact it did quite properly grant his request for more than that. But there is nothing in the material before me to suggest that the bereavement-leave-with-pay portion of this leave of absence was other than the most natural time, that is, the time following the death up which the right to leave with pay arose.

It is not necessarily the case that bereavement leave may be granted only in respect of the period immediately following the death of a person related to an employee in the manner set out in the agreement. There may be particular cases in which bereavement leave with pay could quite properly be taken at some later time. Such situations should be dealt with on their own facts. In the instant case, there is nothing to suggest that the grievor requested his bereavement leave at any unusual time, or that any reasons were advanced, why it should not be taken at the time of the bereavement. If the Union's position were correct, bereavement leave could be taken at any time of an employee's choosing following the death of a person in the class described in the agreement - it would be, in effect, a sort of holiday. Such a conclusion is not only unpleasant, but is not what the collective agreement contemplates.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL  
ARBITRATOR