CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 435

Heard at Montreal, Tuesday, February 12th, 1974

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Calculation of the Cost of Living Allowance.

JOINT STATEMENT OF ISSUE:

The equivalent of the entitlement to C.O.L.A. payment for the United Transportation Union (T) was worked out on the basis of actual time on duty and cancelled after reporting in payment.

The United Transportation Union (T) claims it should have been done under the mileage pay structure.

The Railway claims the method worked out is in accordance with the Collective Labour Agreement and the principles of the C.O.L.A. Appendix.

The Union filed a grievance. The Railway rejected the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. J. SIROIS GENERAL CHAIRMAN	(SGD.) P. L. MORIN SUPERINTENDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	Counsel
P. L. Morin	Superintendent-Employee Compensation, Q.N.S.&L.Rly.Sept-Iles
R. C. Martin	Superintendent - Labour Relations, Q.N.S.&L. Rly.
W. A. Adams	Trainmaster - Q.N.S.&L. Rly., Sept-Iles
T. Leger	Assistant - Labour Relations, Q.N.S.&L. Rly., Sept-Iles
C. Nobert	Assistant - Labour Relations, Q.N.S.&L. Rly., Sept-Iles

And on behalf of the Brotherhood:

J. H. Bourcier, General Chairman, U.T.U.(T) - Sept-Iles, Que.

G. W. McDevitt, Vice-President, U.T.U., Ottawa.

AWARD OF THE ARBITRATOR

Appendix "D" to the collective agreement provides for a cost-of living allowance (C.O.L.A..}, by which, on certain adjustment dates, an allowan "equal to one cent per hour for each full .5 of a point change in the (Consumer Price Index) shall become payable for all hours worked and for any reporting allowance credited before the next adjustment date" (Clause B of Appendix "D"). The cost-of-living allowance was negotiated by this Company and another, with a group of Unions representing their employees. In many cases, the employees concerned were paid on an hourly basis. In the case of this Union, however, employees are generally paid on a mileage basis, and their wage increase was made in the form of a "per mile increase". Thus, a difficulty arises in the application of Clause B of Appendix "D", since that clause provides for the C.O.L.A. to be payable "for all hours worked and for any reporting allowance credited", language more appropriate to the hourly-paid employees than to those paid on a mileage basis.

This difficulty was recognized by the parties and in order to deal with it, clause H was agreed to. It provides as follows:

> "H) For United Transportation Union Trainmen, the entitlement to C.O.L.A. payment or its equivalent to be worked out."

In working out the C.O.L.A. payment or its equivalent for the purpose of payment to employees covered by this collective agreement, the Railway regarded "time on duty" as the equivalent of "hours worked" and mileage allowed for "called and cancelled after reporting" as the equivalent of "reporting allowance". The issue now to be determined is whether these items are equivalent, and whether the allowance is properly being paid to employees covered by this agreement.

Clause C of Appendix "D" provides as follows.

> "C) The C.O.L.A. shall be an "add-on" and shall not be part of the employee's wage or salary rate. Such adjustment shall be payable only for hours actually worked and for reporting allowance but shall not be included for the computation of vacation pays nor shall it be paid during vacations and shall be excluded in the calculations of any other allowance or benefit."

It is clear from this that the allowance is to be calculated with the basis of some, but not all, of the compensation which an employee may receive. This is true both of hourly-rated and mileage-rated employees, and the "equivalent" allowance to be paid to trainmen covered by this collective agreement was certainly intended to be a benefit to them of equal value to the benefit provided for other employees under other collective agreements. The working-out of this equivalent payment, then, involves the determination with respect to no leage-rated employees, of those aspects of their compensation which are analogous to those of the hourly-rated employees, referred to in Appendix "D" for the purpose of determining the cost-of-living

allowance.

It appears from Clause C of Appendix "D" that what is contemplated is a precise money payment, variable with fluctuations in the Consumer Price Index, and "added on" to the earnings otherwise payable to employees under the collective agreement. The amount to be added on is expressed in Clause B of Appendix "D" as an hourly rate, and varies with fluctuations in the Consumer Price Index. This hourly rate is then multiplied by the appropriate number of hours in order to obtain the allowance payable in any case. The difficulty in this case is not in converting a rate per mile to a rate per hour, but rather in determining what is the appropriate number of hours by which the rate is to be multiplied. In terms of the trainmen's situation, the difficulty is in determining what "mileage" is to be counted in calculating the cost-of-living allowance.

For hourly-rated employees, the question of the appropriate hours to be considered is touched on in Clauses B and C of Appendix "D". Clause B refers to "all hours worked" and "any reporting allowance", and Clause C refers to "hours actually worked" and to "reporting allowance". Clause C goes on to provide that the allowance shall not be paid during vacations, and that it shall be excluded "in the calculation of any other allowan or benefit". In my view these clauses are consistent, and their net effect, for the purposes of this case, is to provide that there are two sorts of "hours" appropriate to be used as multipliers of C.O.L.A. rate, namely, those hours when an employee is actually at work, and those hours for which he is entitled to payment by way of a reporting allowance.

The application of that provision would appear to be straight-forward in the case of most hourly-rated employees in industrial situations. Difficulties arise, however, when those concepts are to be applied in the case of railroad operating employees, whose work schedules and methods of payment differ substantially from those of most employees in an industrial milieu.

There are certain conditions or certain types of work with respect to which trainmen are entitled to extra allowances - expressed in terms of miles but convertible into hours - which would increase their actual earnings for on-duty time. It seems clear from the provisions which have been referred to that those would not be considered in determining the multiplier to be applied to the C.O.L.A. rate, and that is acknowledged by the Union. It seems clear as well that the allowance for "called and cancelled after reporting in" is strictly analogous to a "reporting allowance" indeed is a reporting allowance and any mileage to which a trainman is entitled under that head is to be included in the calculation of his C.O.L.A. Further, actual time on duty must be taken as consisting the equivalent of "hours actually worked", and is to be included. The railroad has considered these two items as constituting the appropriate components of the multiplier to be applied to the C.O.L.A. rate in the case of trainmen. There is no doubt that these items are appropriate to be included, but the Union contends that there is more, and in particular that the hourly equivalent of layover pay and of guarantees should be included as well.

It was argued that since the purpose of a cost-of-living allowance is

to maintain the purchasing power of employees at pre-determined levels during the term of a collective agreement, it should be based on total income although the basing of such payments on regular earnings, as a practical matter was acknowledged. While there is obvious force in the argument it does not, with respect, go to the question before me. It is not what the parties "should have agreed to, but what they did agree to, that must govern the matter. Here the parties did not refer to "regular" earnings, but rather to an allowance based on the two factors above referred to. It is acknowledged that there are many constituents of an employee's earnings which are not to be taken into account, as for example statutory holiday payments, wage premiums or "extras" of various sorts, payments for certain leaves, vacation payments and, general payments for "allowed hours not worked". I agree that these are not to be included in calculating the multiplier for the C.O.L.A. rate.

Nevertheless, care must be taken in making the transition from the case of hourly-rated employees (whose "regular" earnings in the normal sense can usually be taken to mean earnings for hours actually worked, exclusive of premiums, overtime and the like) to that of trainmen whose regular earnings frequently include payments under "layover" or "held away" clauses. In the case of trainmen, their payment under such heads is, in my view, in the nature of "regular" earnings, and having regard to the nature and conditions of their work, the hours for which they are so paid should be considered as analogous to the "hours actually worked" by hourly-rated employees. It is only by taking such periods into account that a proper equivalent can, in my view, be established between the two cases.

The matter of payment to trainmen under provisions for a guarantee is more difficult. The guarantee is not, like a layover claim, related to any specific time when an employee is "on duty". If hourly-rated employees subject to one of the other collective agreements in which the same C.O.L.A. provisions are fould also had a guarantee provision, it would appear, from the language of the C.O.L.A. provisions, that any payments pursuant to the guarantee would not be considered in calculating the C.O.L.A. The development of an equivalent method for calculating the C.O.L.A. for trainmen could not, therefore, properly take any guarantee into account, even though this might appear to give anomalous results in some cases.

For the foregoing reasons, it must be my conclusion that the C.O.L.A. payment should reflect the hours or hour-equivalents paid pursuant to "layover", "held away" or similar clauses. To that extent therefore the Company will be required to revise its method of calculation of the C.O.L.A. Since questions which were not spoken to at the hearing may yet arise in the determination of precisely which payments are to be considered, or in the determination of hour equivalents, such questions, if not resolved by the parties, may be brought to the Canadian Railway Office of Arbitration for supplemental determination, so that the award may be completed.

J. F. W. WEATHERILL
ARBITRATOR