

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 480

Heard at Montreal, Tuesday, November 12th, 1974

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductors W. J. Sauter, B. Mabbett, D.H. Llywarch, N. T. MacLeod and crews, Coquitlam, for 100 miles when cancelled on February 3rd, 1972 and Conductor W. J. Sauter and crew, Coquitlam, for 100 miles when cancelled on February 4th, 1972.

JOINT STATEMENT OF ISSUE:

On February 3rd, 1972, Conductor B. Mabbett and crew, assigned to the 2nd Coquitlam Transfer with a regular starting time of 0700 were cancelled at 0515; Conductor W. J. Sauter and crew, assigned to the 4th Coquitlam Transfer with a regular starting time of 1500 were ordered for 1600 and were cancelled at 1425, Conductor D. H. Llywarch and crew, assigned to the 2nd Westminster Branch with a regular starting time of 1530 were cancelled at 1045 Conductor N. T. MacLeod and crew, assigned to the 1st Night Transfer with a regular starting time of 2100 were cancelled at 1830, and on February 4th, 1972 Conductor W. J. Sauter and crew, assigned to the 4th Coquitlam Transfer with a regular starting time of 1500 were cancelled at 1100.

The Company declined the claims on the basis that a progressive illegal strike by the Brotherhood of Locomotive Engineers which disrupted normal operations was an unforeseen circumstance under the provisions of Article 25, Clause (c) thereby preventing five hours notice of cancellation. The Union contends that no unforeseen circumstances existed and as five hours advance notice of cancellation was not given, the Company has violated the provisions of Article 25, Clause (c) which reads:-

"Article 25 - Called and Cancelled

(c) Cancellation of Assignments

Trainmen assigned in road service whose assignments are to be cancelled will be given as much advance notice as possible. Except in unforeseen circumstances and emergencies, if less than five (5) hours notice of cancellation in advance of advertised departure time is given, Trainmen will be paid 100 miles at the rate applicable to the class of service to which assigned for each day lost. The foregoing payment does not apply to Trainmen in those classes of service in which a daily

guarantee applies."

FOR THE EMPLOYEES:

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

FOR THE COMPANY:

J. D. BROMLEY  
GENERAL MANAGER O & M  
PACIFIC REGION

There appeared on behalf of the Company:

P. E. Timpson	Assistant Supervisor, Labour Relations, CP Rail, Vancouver
J. Ramage	Special Representative, CP Rail, Montreal

And on behalf of the Brotherhood:

R. T. O'Brien	General Chairman, U.T.U.(T)	Calgary
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#### AWARD OF THE ARBITRATOR

In each case the grievors' assignments were cancelled on less than five hours' notice. They would thus be entitled to the payment claimed unless it can be shown that in each case there were "unforeseen circumstances" or "emergencies" which would relieve the Company of its obligation.

Each case must be considered on its own facts. In the case of Conductor Mabbett and crew, they were called for 0700 on February 3, and cancelled at 0515 that day. The regular engineman for their assignment had booked off (apparently in furtherance of an illegal strike) at 2230 on February 2. As of that point (and it was then apparent to the Company that an illegal strike of enginemen was taking place), the Company could foresee the likelihood of cancellation of Conductor Mabbett's assignment. Another qualified engineman was not contacted until 0500 on the 3rd, when he too booked sick. The Company did not leave itself enough time to give five hours' notice of cancellation to Conductor Mabbett and crew, and they are entitled to payment under Article 25(c).

In the case of Conductor Sauter and crew, they were called for 1500 on February 3 and cancelled at 1420 that day. The regular engineman, E. K. Elliott, had booked sick at 1415. Now while the Company was aware that a strike was taking place, the strike was illegal and not every employee could be presumed to participate. Further, other enginemen had booked off in sufficient time to allow the Company to take proper steps with respect to cancellation of assignments. In this case, it was engineman Elliott who was directly responsible for the grievors' loss, and the Company was not obliged to make payment under Article 25 (c).

In the case of Conductor Llywarch and crew, they were called for 1530 on February 3 and cancelled at 1045 that day. The regular engineman had booked off at 2235 on the 2nd. There was no spare man. A qualified engineer was, however, booked for an assignment at 1400, but when asked to take the 1530 assignment, refused to do so. The Company has not shown when this request was made. As in the case of

Conductor Mabbett, the possibility of cancellation could be foreseen in ample time, and the onus is on the Company to bring itself within the proviso to Article 25 (c). That has not been done in this case and Conductor Llywarch and crew are entitled to payment.

In the case of Conductor MacLeod and crew, they were called for 2100 on February 3 and cancelled at 1830 on that day. It would appear to have been known for some time that no regular or spare engineman would be available. Again, the onus is on the Company to show that the case comes within the proviso to Article 25(c), and this has not been done. When a qualified man was notified at 1800 and booked unfit, it was then too late to give proper notice to the grievors. Accordingly they are entitled to payment.

In the second case of Conductor Sauter and crew, they were called for 1500 on February 4 and cancelled at 1100 that day. By this time an injunction had been granted against the continuation of the engineers' illegal strike, and the Company could not have been expected to foresee that it would not be promptly complied with. The necessity of cancellation of this assignment was an unforeseen circumstance within the meaning of Article 25 (c). In this case as well, it was the engineers who were directly responsible for the grievors' loss.

For the foregoing reasons, the grievances of Conductor Mabbett and crew, Conductor Llywarch and crew and Conductor MacLeod and crew are allowed. The grievances of Conductor Sauter and crew are dismissed.

J. F. W. WEATHERILL  
ARBITRATOR