

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 856

Heard at Montreal, Wednesday, September 9, 1981

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES  
EX PARTE

DISPUTE:

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This concerns terminal delay time pay claimed in the names of mileage rated vehiclemen for time spent outside of and in addition to their regularly scheduled bulletined and awarded assignments as established in Article 7.2.11 of the Working Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

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Mileage rated vehiclemen B. V. MacFarlane and K. Sargent - Calgary - Maple Creek routes were prepared to report for duty at the time spelled out on their scheduled assignments, they were instructed by a Company Officer not to report at their regularly scheduled time but to report four hours and forty-five minutes later, they did report as instructed which delayed them in addition to and outside their regularly scheduled starting and termination time.

The Brotherhood contends that these mileage rated employees have schedule hours of service as are all terminal employees and are not on duty and in the service of the Company outside of or in addition to their scheduled assignment without being paid for all such time which is considered as delay time sponsored by the Company and beyond the control of these mileage rated vehiclemen.

The Brotherhood demands full delay time as provided in Article 33.3 for all time held in delay at Calgary.

The Company suggests that as these employees were advised not to report for duty at the regular time as spelled out on their scheduled position that they acted in accordance with Article 33.1 and declined the claims.

FOR THE EMPLOYEES:

(SGD.) J. J. BOYCE  
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D.R. Smith           -- Director Industrial Relations Administration  
                      & Personnel, CP Express, Montreal

B.D. Neill           -- Manager Labour Relations, CP Express,  
                      Montreal

R.A. Colquhoun   -- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J.J. Boyce           -- General Chairman, BRAC, Toronto

J. Crabb            -- Vice-General Chairman, BRAC, Toronto

G. Moore            -- Vice-General Chairman, Moose Jaw, Sask.

#### AWARD OF THE ARBITRATOR

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Article 33.3 of the collective agreement is as follows:

"A mileage-rated Vehicleman will be paid for all terminal  
delay on the actual minute basis."

"Terminal delay" is defined in article 33.1 of the collective  
agreement as follows:

"Terminal delay occurs when a vehicleman is held over at the  
terminal point beyond the time he was advised to report for  
duty, or such later time as he actually reports for duty.  
Terminal delay is exclusive of time spent performing such  
normal duties as inspecting and servicing units, picking up  
running orders, bills and any other preparatory duties that  
may be assigned, it being understood that all such duties are  
paid for by the mileage rate of pay."

In the instant case the grievors were instructed to report, not at  
their regularly scheduled starting time of 0445, but rather at 0900.  
They reported at the later hour as instructed, carried out their  
assignment and were paid in the usual way. The issue is whether or  
not they were entitled to payment under article 33.3 in respect of  
the period from 0445 to 0900.

In my view, the grievors were not entitled to such payment. Terminal  
delay, as article 33.1 makes clear, occurs when a vehicleman is held  
over at the terminal point "beyond the time he was advised to report  
for duty, or such later time as he actually reports for duty". The  
fact of having a regularly scheduled assignment does not mean, in the  
absence of clear language in the collective agreement to that effect,  
that an employee is somehow automatically considered to have reported  
for duty at the regular time, or that the regular features of the  
assignment are somehow guaranteed.

In the instant case the grievors, quite properly, reported for duty  
at 0900. There could be no terminal delay for them before that time.

I was not referred to any provision of the collective agreement calling for payment where reporting time is delayed.

For the foregoing reasons, the grievance is dismissed.

J.F.W. Weatherill  
Arbitrator