CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1006

Heard at Montreal, Wednesday, November 10th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(ATLANTIC REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Union that C. J. Pomerleau - Lancaster, N.B., H. L. Laflaxm? - Lancaster, N.B., and P. A. Laflaxme - Bay Shore, N.B., track employees holding permanently established positions at those locations, be paid for weekend transportation between Saint John, N.B. and their residences in Lac Megantic, Quebec.

JOINT STATEMENT OF ISSUE:

The Union contends:

That C. J. Pomerleau - Lancaster, N.B., H. L. Laflamme - Lancaster, N.B., and P. A. Laflamme - Bay Shore, N.B., track employees hold permanently established positions at those locations and living in Lac Megantic, Quebec, are entitled to weekend transportation. Section 20.5, Wage Agreement #41.

That payment for transportation be from 60 days prior to January 31, 1982, Section 19.4 and onward for each weekend they travelled.

The Company denies the Union's contention and declined payment of the claims.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN System Federation General Chairman	(SGD.) J. B. CHABOT General Manager, Operation and Maintenance.

There appeared on behalf of the Company:

B. A. Demers	- Supervisor, Labour Relations, Atlantic Region, CPR, Montreal
J. H. Blotsky	- Asst. Supervisor, Labour Relations, Atlantic Region, CPR, Montreal
I. J. Waddell	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
R. Wyrostok	- Federation General Chairman, BMWE, Edmonton
E. J. Smith	- General Chairman, BMWE , London

L.DiMassimo - General Chairman, BMWE, Montreal
F. L. Stoppler - Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

Article 20.5 of the Collective Agreement is as follows:

> "20.5 Opportunity and free transportation shall be given to employees for getting to their place of residence at weekends, when such leave will not interfere with the prosecution of the work.
> (See Miscellaneous Letters of Understanding, Letter dated March 3, 1970.)."

The Letter of Understanding dated March 3, 1970, referred to in Article 20.5, is as follows:

> "Please refer to the Memorandum of Settlement signed at Montreal on February 18th, 1970, with particular reference to Union Demand No. 4, referred to on page five of the Settlement, dealing with the subject of employees travelling on weekends.
>
> This will confirm understanding reached that practices presently in effect on CP Rail and on Canadian National Railways will continue to be followed and that in addition the practice of providing bus transportation will be introduced on Canadian National Railways in a manner similar to that now in effect on CP Rail. A copy of the letter of instruction in respect to bus transportation which will be sent to all regions of Canadian National Railways will be forwarded to you in due course.
>
> The foregoing arrangements will continue until such time as the parties have had an adequate opportunity to properly study this particular feature with a view to arriving at a mutually acceptable arrangement which would be included in Wage Agreements Nos. 13 and 14. It was understood that in conducting this study the parties would direct their efforts toward a fair and practical arrangement which would not interfere with the performance of the work nor place an unreasonable economic burden upon the railways and which would contain suitable restrictions on items such as the frequency of trips and maximum distances.
>
> It is further understood that if the parties are not able to reach agreement on this matter prior to the date on which the collective agreements are next open for revision, then this particular item will be accepted by both parties as one of the matters to be negotiated in the open period. This understanding therefore waives the provisions of Article IX of the Master Agreement of January 29th, 1969, requiring such notices to be

served prior to March 31st, 1970."

The mileage allowance which would be payable to the grievors pursuant to any entitlement they may have under Article 20 is set out in a subsequent letter of understanding dated September 15, 1981. That letter does not, however, deal with the question of entitlement itself.

It will be apparent that the Union's contention is a far-reaching one. Any employee whose place of work is not the same as his place of residence would be entitled, if the Union's interpretation is correct, to free transportation from one to the other every weekend, regardless of the distance involved.

While a literal reading of the Article, taken out of context, would appear to support that view, it is clear from the Letter of Understanding that "practices presently in effect" were to be continued, and that a "fair and practical arrangement" was to be developed which would not place an unreasonable economic burden on the Railway and which would contain suitable restrictions on such items as the frequency of trips and maximum distances. It is clear then that the Agreement does not require free transoortation from the place of work to the place of residence every weekend, for every employee. There is, however, no evidence that the sort of agreement contemplated by the Letter of' Understanding has ever been made. Failing that, it must be determined what the practices were which were referred to in the Letter of Understanding.

It may be noted that there are certain specific provisions for payment of travel costs. Article 20.4 provides for a payment to laid off employees who are re-engaged within one year, although the payment is limited in respect of area. By Article 20.7, employees moving from one point to another by order of the Railway, or in the exercise of seniority rights, are entitled to free-of-charge transportation of their household effects. Neither of those provisions seems to have any implication for the interpretation of Article 20.5.

The only substantial evidence as to the actual practice of payment is a Company letter (not an Agreement between the parties), issued in 1967. Under the practice there described, the payment was made in respect of employees filling temporary away-from-home vacancies at the Company's request, Extra Gang employees and B & B forces. Section forces bidding in assignments away from home were not to be reimbursed for transportation. The grievors fall clearly in the latter category.

The grievors, like other employees, had had the advantage of using Company rail passes, to which they were and are entitled under Article 20.1. They used these passes for commuting to their homes on weekends. Those passes were subject to Company regulations, and in any event were useful only where there were available trains. Reduction in train service has reduced the value of the passes, at least for the grievors' purposes. It was partially in response to the problems thus created for certain employees (although not for those in circumstances like the grievors') that the 1967 policy was developed. The policy was extended in its geographical application,

and by the 1970 Letter of Understanding included the provision of bus transportation. The policy was not, however - from the material before me - one of providing free transportation home each weekend for employees such as the grievors, who had bid on permanent section positions situated some distance from their place of residence.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.