

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1194

Heard at Montreal, Wednesday, February 15, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for reimbursement of \$122.66 reduced from spareboard guarantee of spare Trainman G. D. Kindrachuk, Moose Jaw, account the Company making two deductions for two calls missed in one 24-hour period.

JOINT STATEMENT OF ISSUE:

Spare Trainman G. D. Kindrachuk missed a call for 0325, Saturday, February 5, 1983 and missed a second call for 0115, Sunday, February 6, 1983. For missing these two calls, the Company reduced the spareboard guarantee a total of \$245.32.

The Union agrees that by reason of missing the call for 0325, Saturday, February 5, 1983, the spareboard guarantee could be reduced by \$122.66 pursuant to Article 37(d), paragraph (b) (i). However, it is the Union's position that as Mr. Kindrachuk could not have made both trips, a reduction in the spareboard guarantee could not be made in both instances as to do so would allow the Company to reduce two days' pay for one day's lost work.

It is the Company's position that in the normal operation of the spareboard, Trainman Kindrachuk was unavailable for duty for two separate and distinct calls and deductions from the spareboard guarantee in each instance was in accord with the provisions of Article 37.

FOR THE UNION:

(SGD.) J. H. McLEOD
General Chairman

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH
General Manager,
Operation and Maintenance.

There appeared on behalf of the Company:

F. B. Reynolds - Supervisor, Labour Relations, CPR, Winnipeg
R. D. Falzarano - Asst. Supervisor, Labour Relations, CPR,
Winnipeg
B. P. Scott - Labour Relations Officer, CPR, Montreal

And on behalf of the Union:

P. P. Burke - Vice-President, UTU, Calgary

J. H. McLeod - General Chairman, UTU, Calgary
R. Proulx - Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

The simple issue in this case pertains to whether an employee on the spareboard can have deducted after his first missed call a day's pay for each subsequent missed call he incurs in one 24-hour period.

The relevant provision of the collective agreement that governs this issue is Article 37 (d) (b) (i):

"(b) an employee on a road or common spareboard who is available for duty for the entire month will be guaranteed for such month an amount equal to the monetary value of 2600 miles at a brakeman's through freight rate of pay subject to the following conditions:

(i) Except as provided in sub-section (ii) of this section (b), the guarantee will be reduced by one day's pay at the brakeman's through freight rate of pay each time an employee books sick or otherwise is not available for duty and additionally for each subsequent 24 hour period or major portion thereof commencing at the expiration of 24 hours after the time such employee first booked sick or otherwise made himself unavailable for duty or for each call missed or for each occasion on which an employee books in excess of 12 hours rest. The latter condition does not preclude the calling of an employee for duty after expiration of 8 hours rest if no other spare employee is available for duty. However, in the event an employee is called and is not available for duty for any reason between the expiration of the eighth hour and the twelfth hour, no reduction shall be made in his guarantee."

The trade union submitted that after an employee on the spareboard has had deducted a day's wage after a first missed call he is protected from additional deductions in pay for missed calls within the same twenty-four hour period. The relevant language of Article 37 (d) (b) (i) should be construed to restrain an employer from imposing a penalty for subsequent missed calls "...commencing at the expiration of twenty- four hours..". In this context the term "missed calls" is argued by the trade union to be included in the phrase "otherwise made himself unavailable".

The trade union's submission is without merit. The twenty-four hour protective or insulation period contained in Article 37 (d) (b) (i) is clearly adjectival to "an employee (who) books sick or otherwise is not available for duty". If the like insulation period was intended to protect an employee who missed several calls within a twenty-four hour period under the umbrella of an employee who otherwise makes himself unavailable for duty, then the reference to "missed calls" in the provision is superfluous to the language of the collective agreement.

I am satisfied that the twenty-four hour protective period is intended to apply to employees who book off sick or who otherwise are unavailable for duty by leave of the employer. In this regard, an employee who is otherwise unavailable for duty is an employee who has been granted the employer's permission to be unavailable. In other words, an employee on a leave of absence would not be penalized on more than one occasion within one twenty-four hour period because, by reason of the employer's consent, he has been removed from the spareboard.

This is not the same situation as the employee who is otherwise unavailable for duty because of "a missed call". Once an employee fails to respond to a call he remains on the spareboard and must remain available for calls.

The fallacy in the trade union's argument is demonstrated should the employer miss calling an employee on the spareboard within twenty-four hours after an employee's first missed call. In that case the employer, as the parties agreed, would be obliged to pay the employee a penalty for that "missed call". The same would not apply, in a like circumstance, to an employee who has booked off sick or is otherwise unavailable for duty by leave of the employer. That employee could make no such claim because he has been removed from the spareboard.

In other words, the entitled rights that accrue to an employee's benefit under the collective agreement often have corresponding obligations that if not satisfied, may be detrimental to that employee. I am satisfied that an employee who has been penalized for a missed call is not protected from further penalty for subsequent missed calls within a twenty-four hour period.

The concern expressed by the trade union, should an employee lose his monthly guarantee by virtue of four missed calls within a twenty-four hour period, will simply have to be addressed at the negotiating table.

For all the foregoing reasons the monies deducted from the grievor's guaranteed monthly salary for his second missed call within the same twenty-four hour period was proper. The grievance is therefore denied.

DAVID H. KATES,
ARBITRATOR.