CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1315.

Heard in Montreal, Tuesday, January 8th, 1985.

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Leading Track Maintainer E. K. Nowen for meal expenses in the amount of $54.00.

JOINT STATEMENT OF ISSUE:

Mr. Nowen and three other employees were members of the Windsor Junction Section crew.

On Novemter 21, 22, 23, 24, 29, 30 and December 1, 1983, they were required to assist the Stewiacke Section crew with a backlog of work. On each of these days, they continued to report for work at their assigned headquarters location on the Windsor Junction Section at their regular starting time of 07:00 hours. The employees were then transported approximately 32 miles to the Stewiacke Section where they performed their assignments. On completion of each days' work they were transported back to their headquarters on the Windsor Junction Section where they arrived prior to their usual quitting time of 16:00 hours.

Mr. Nowen submitted a $54.00 claim for meal expenses which the Company declined to pay.

The Union contends that the Company violated the provisions of Section 21.8 of Agreement 10.1 and requested that Mr. Nowen be paid $54.00 for meal expenses.

The Company has denied the request.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation General
Chairman - Eastern Lines

FOR THE COMPANY:

(SGD.) J. R. GILMAN
FOR: Assistant
Vice-President
Labour Relations

There appeared on behalf of the Company:
T.D. Ferens, Manager Labour Relations, Montreal.
J. Russell, System Labour Relations Officer, Montreal.
H.W. Hartman, Labour Relations Officer, Moncton.

M. Menard, Employee Relations Officer, Montreal.

And on behalf of the Brotherhood:

P.A. Legros, System Fed. Gen. Chairman, BMWE, Ottawa.
R.Y. Gaudreau, Vice President, BMWE, Ottawa.
A. Toupin, General Chairman, BMWE, Montreal.
J.J. Roach, General Chairman, BMWE, Moncton.

AWARD OF THE ARBITRATOR

The grievor's claim for the meal allowance pursuant to Article 21.8 of Agreement 10.1 is premised on my acceding to its interpretation that the word "or" placed between "employees taken off their assigned territory" and "regular boarding outfits" should be treated disjunctively. Accordingly, given that the grievor was taken off his regularly assigned territory it is argued that the entitlement to the requested meal allowance would necessarily follow. Article 21.8 reads as follows:-

> "Employees taken off their assigned territory or regular boarding outfits, to work temporarily on snow or tie trains, or other work shall be compensated for boarding and lodggng expenses they necessarily incur. This shall also apply under similar conditions to pump repairers when taken away from their headquarters and to pumpmen when away from their regular assigned territory."

Unfortunately, from the trade union's perspective, several railway arbitrable precedents both at CROA and elsewhere have attached to Article 21.8 the exact opposite interpretation to the trade union's submission. The most compelling example being CROA 561 where it was written:-

> "In my view, Article 21.8 must be read as a whole. While the wording of the first sentence of the article may well give rise to debate, it is my view that the word "or" in the opening clause is not used disjunctively, but rather serves to qualify the reference to "assigned territory" by the immediately following reference to "regular boarding outfits." The purpose of the provision is to ensure that employees are compensated for board and lodging expenses when off their assigned territory without their regular boarding outfits."

The trade union attempted to distinguish the arbitrable prece- dents raised in the company's brief on the basis of the different factual circumstances in this case from those circumstances described in the precedents. The notion was specifically advanced that because the grievor's "out of assigned territory" work did not arise from a regular boarding outfit then the desired interpretation should prevail.

It appears to me that the trade union's distinction of the interpretations rendered in the past of Article 21.8 of Agreement 10 because of a difference in facts is entirely specious. Surely, the

"or" placed at the critical juncture of Article 21.8 is either disjunctive or not. The past arbitrable precedents have established that the interpretation advanced by the trade union is inappropriate. Accordingly, unless the trade union can convince me that the interpretation that is attacked is patently unreasonable or is an interpretation that the language of the provision cannot support, then the factual context in which the dispute arose is of no consequence.

In the last analysis in my view, the word "or" is not intended to be read disjunctively and thereby the term "or regular boarding outfits" describes and defines the circumstances that might give rise to a legitimate claim for boarding and lodging expenses as a result of an employee being taken off his regular assigned territory.

As a result the trade union's claim for the meal allowance is denied and the grievance is dismissed.

DAVID H. KATES
ARBITRATOR.