

CANADIAN RAILWAY OFFICE OF ADJUDICATION

CASE NO. 1610

Heard at Montreal, Thursday, January 15, 1987

Concerning

BULK SYSTEMS

(A Division of CP Express & Transport/CP Trucks)

and

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

DISPUTE:

Concerns no proper notice provided to S. Smith, Petroleum Mileage-rated Vehicleman, as per Article 15.8 (a), when his regularly assigned position was not required, and payment for July 22, 1986, as his route was cancelled and no trips were available, as outlined in Article 28.16 of the Collective Working Agreement.

JOINT STATEMENT OF ISSUE:

Mr. S. Smith holds bulletined and awarded petroleum mileage-rated driver position 048.86.

The position of the Union is that inasmuch as S. Smith was on a petroleum mileage-rated bulletin that was not spareboard that he must be paid for date of July 22, 1986, as outlined in Article 28.16 of the Collective Working Agreement.

The position of the Company is that simply because they failed to bulletin this petroleum mileage-rated position as required by Article 13.14 of the Collective Working Agreement that they can somehow consider this position as a spareboard one and they declined the Union's grievance claim.

The relief requested is that petroleum mileage-rated employee S. Smith be paid no less than the regular assigned mileage as provided in Article 28.16 for July 22, 1986.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE  
General Chairman  
System Board of Adjustment 517

FOR THE COMPANY:

(SGD.) GEORGE LLOYD  
Vice-President & General  
Manager

There appeared on behalf of the Company:

B. D. Neill - Director, Labour Relations, CP Trucks,  
Toronto  
George E.D. Lloyd - Vice-President & General Manager, Bulk  
Systems, Burnaby  
Brian F. Weinert - Manager, Labour Relations, CPE&T, Toronto

And on behalf of the Brotherhood:

|             |   |
|-------------|---|
| J. J. Boyce | - General Chairman, BRAC, Toronto       |
| M. Gauthier | - Vice-General Chairman, BRAC, Montreal |

#### AWARD OF THE ARBITRATOR

It is not disputed that Bulk Systems does not operate according to a normally scheduled timetable, as would be the case for a general freight carrier. The bulk hauler is only paid when it hauls a full load of a commodity, the timing of which depends entirely on the needs of its customers, which vary from day to day. In these circumstances there can be no guarantee to any employee that he or she will work according to any regular or prearranged schedule. This was acknowledged by the parties in the wording of Article 28.19 of their Collective Agreement which provides:

28.19 The parties agree to the concept of the Spareboard operation. It is agreed that this matter will be resolved by a small sub-committee to meet within 60 days of ratification of this settlement.

While Article 13 of the Collective Agreement makes provision for the bulletining of positions, in the Arbitrator's view it must be interpreted and applied within the greater context of the Collective Agreement, having regard to the nature of the Company's operation and to the Parties' explicit acknowledgement in Article 28.19 that its operation must be on a spareboard basis. While it appears that the Parties have not resolved the details of the spareboard principle, they are presently in bargaining for the renewal of the Collective Agreement and are in a position to do so. Given the language of the Collective Agreement under which the instant grievance is brought, the Arbitrator must accept the interpretation adopted by the Company. For these reasons the grievance must be dismissed.

MICHEL G. PICHER,  
ARBITRATOR.