

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1654

Heard at Montreal Tuesday, June 9, 1987

Concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim by eighteen (18) employees of Gang No. 91 for two (2) hours' pay while travelling from Coleman, Ontario to Matheson, Ontario on October 1, 1986 on orders of the Company.

JOINT STATEMENT OF ISSUE:

On October 1, 1986 from 0700 to 0800 hours, eighteen (18) employees of Gang No. 91 prepared boarding cars for moving at Coleman and then travelled in the boarding cars by freight train to Matheson, Ontario from 0800 to 1700 hours, an elapsed time in total of some 10 hours.

As the employees were only paid for eight (8) hours, it is the contention of the Organization that in accordance with Agreement 7.1, Section 11.2, Clause (a), the Company pay each of the eighteen (18) members of Gang No. 91 an additional two (2) hours pay.

The Company has denied the Union's contention.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) G. SCHNEIDER  
System Federation  
General Chairman

(SGD.) P.A. DYMENT  
General Manager

There appeared on behalf of the Company:

A. Rotondo - Manager Labour Relations, North Bay  
G.A. Payne - Chief Engineer, North Bay

And on behalf of the Brotherhood:

G. Schneider - System Federation General Chairman, Winnipeg  
M. Gottheil - Assistant to the Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The entitlement to payment for time travelling is governed by Article 11.2 of the Collective Agreement which provides as follows:

11.2 Employees will be paid for time travelling in boarding and sleeping cars, on order of the Company under the following conditions only:

- (a) during regular working hours, or
- (b) between 12:01 a.m. and 6:00 a.m. provided the employees concerned have to work that day, or
- (c) between 6:00 a.m. and 10:00 p.m. on a regularly assigned rest day or on a general holiday.

Payment under the foregoing conditions shall be at straight time.

The Collective Agreement contains no definition of "regular working hours". It does, however, contemplate a 5 day work week of 8 hour days. In this regard the following provisions of the Collective Agreement are instructive:

4.1 The work week for all employees covered by this agreement, unless otherwise excepted herein shall be forty hours consisting of five days of eight hours each, with two consecutive rest days in each seven, subject to the following modifications: the work weeks may be staggered in accordance with the Railways' operational requirements. This clause shall not be construed to create a guarantee of any number of hours or days of work not provided for elsewhere in this agreement. (See Clause 8.6 for definition of work week.)

2.1 Eight consecutive hours, exclusive of meal period (which shall be one hour unless otherwise mutually arranged) shall, except as otherwise provided, constitute a day's work.

NOTE: See Understanding No. 1

2.2 Regular day shifts shall start at or between 6:00 a.m. and 8:00 a.m.

2.3 Notwithstanding the provisions of Clause 2.2, the starting time for employees not living in boarding cars or other mobile units may be established or changed to meet the requirements of the service. When the starting time is to be changed, forty-eight hours' advance notice will be given to the employees affected and, where practicable, the notice will be posted promptly in a place accessible to such employees. The appropriate

Local and Area Chairman shall be advised of any change in starting time.

2.4 Notwithstanding the provisions of Clause 2.2, the starting time for employees living in boarding cars or other mobile units, or for employees who would ordinarily be accommodated in boarding cars or other mobile units, may be established or changed to meet the requirements of the service. When the starting time is to be changed, as much advance notice as possible, but not later than at the completion of the previous tour of duty, shall be given the employees affected and, where practicable, the notice will be posted promptly in a place accessible to such employees, the appropriate Local and Area Chairman shall be advised of any change in starting time.

It does not appear disputed that what transpired on October 1, 1986, was exceptional, insofar as the working hours of the crew were concerned. The crew had been working a regular shift from 0800 to 1700. Pursuant to Article 2.4 of the Collective Agreement, on September 30, 1986, the gang was informed that the starting time for the next day was changed to 0700 hours. As a result the gang worked from 0700 hours to 0800 hours and travelled between 0800 hours and 1700 hours. (Although the time of arrival was slightly in advance of 1700 hours, the Company accepts that time for the purpose of this grievance). It appears to the Arbitrator that during the week in question the "regular working hours" of the gang were between 0800 and 1700 hours. In that sense the extra hour worked between 0700 and 0800 on October 1st was irregular and the time spent travelling fell during the gang's regular working hours. In other words, their travelling time fell within the purview of Article 11.2 (a).

The Arbitrator has greater difficulty, however, with the submission of the Union that the lunch hour should be paid. It is common ground that the employees were travelling and not performing work during all of the hours between 0800 and 1700 on the day in question. Box lunches were provided to them although, for obvious reasons, they did not take a defined one hour break from their work since no work was being performed. In these circumstances the regular lunch hour of the gang, which is between 1200 and 1300 hours, cannot be said to fall during "regular working hours". That is particularly true in light of the provision of Article 2.1 which expressly excludes the meal period from the definition of a day's work. In these circumstances, therefore, the employees' claim for one hour in respect of the lunch period cannot be sustained.

For the reasons advanced above, however, the Arbitrator must conclude that the gang did spend eight hours, which would otherwise have been regular working hours, between 0800 and 1700 hours on October 1, 1986 travelling in boarding and sleeping cars on orders of the Company within the meaning of Article 11.2 of the Collective Agreement. They were therefore entitled to 8 hours pay in respect of that time, in addition to a further hour's pay for the work performed between 0700 and 0800 hours earlier that day. For these reasons the grievance is allowed in part. The Company is hereby ordered to pay one hour at

straight time to each of the 18 employees of gang 91 in respect of their service on October 1, 1986. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER  
ARBITRATOR