

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1708

Heard at Montreal, Tuesday, November 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor D. H. Pearn, London, for payment of 379 miles at through freight rates and 6 miles at way freight rates.

JOINT STATEMENT OF ISSUE:

On 9 July 1986, Conductor Pearn attended an investigation in connection with his responsibility for the derailment of two cars on Extra 4530 West on 28 June 1986. As a result of the investigation, Conductor Pearn was assessed 15 demerits.

The Union contends the grievor is entitled to the payment of loss of earnings pursuant to Article 70.3 of Agreement 4.16.

The Company has declined payment.

FOR THE UNION:

(SGD) R. A. BENNETT
General Chairman

FOR THE COMPANY:

(SGD) D. C. FRALEIGH
Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

J. B. Bart	- Labour Relations Officer, Montreal
D. W. Coughlin	- Manager Labour Relations, Montreal
J. Pasteris	- Labour Relations Officer, Montreal
A. E. Heft	- Labour Relations Officer, Montreal
H. J. Koberinski	- Labour Relations Officer, Moncton
D. K. House	- System Transportation Officer, Montreal

And on behalf of the Union:

T. G. Hodges - General Chairman, Toronto
B. LeClerc - General Chairman, Quebec
N. Robinson - Local Chairman, Toronto

AWARD OF THE ARBITRATOR

This grievance is governed by the provision of Article 70 of the Collective Agreement which provides, in part, as follows:

70.1 Employees who, during their off duty time, are required to attend Company investigations or who are held off work by the Company for such investigations and employees who are held off work on Company business on order of the proper Company officer, will be paid as provided in paragraphs 70.2 and 70.3.

70.3 Employees in unassigned service or on the spare board will be allowed pay hour for hour for the first 8 hours in each 24 hours so held (computed from time required to report or to deadhead) on the basis of 1/8th of the daily rate applicable to the class of service last performed, and if they lose their turn, pay will be allowed for a full day of 8 hours or actual time lost when such time can be clearly determined. For Yard Service Employees, payment for actual time lost will not include payment pursuant to paragraphs 35.6 and 35.7 of Article 35 (Operation of Yard Assignments).

The Arbitrator can find no basis in the material for the assertion of the Company that Articles 70.1 and 70.3 have no application to disciplinary investigations. While that position might have been tenable during the currency of Addendum 41, it is common ground that that addendum was rendered ineffective by the withdrawal of the Union from its terms. Whatever the intention of the Company may have been during the process of rewriting the terms of the Collective Agreement, it cannot be said that Article 70 contains any latent or patent ambiguity that would justify recourse to extrinsic evidence to interpret its meaning. In these circumstances the consequences of the contractual language accepted by the Company cannot be avoided.

For these reasons the grievance must be allowed. The grievor shall therefore be paid for his loss of earnings pursuant to Article 70.3 of the Collective Agreement, as claimed. I retain jurisdiction in the event of any dispute between the parties in respect of the amount of compensation.

MICHEL G. PICHER

ARBITRATOR