

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1873

Heard at Montreal, Wednesday, 11 January 1989

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Interpretation of Article 39.02

JOINT STATEMENT OF ISSUE:

The Union grieves that the Railway is not paying the daily guarantee to employees in assigned way freight service contrary to Article 39.02 of the Collective Agreement.

The Railway maintains that a daily guarantee is paid for the calendar working days and that, consequently, it has not violated article 39.02 of the Collective Agreement.

FOR THE UNION:

(SGD) B. ARSENAULT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) A. BELLIVEAU
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo	- Counsel, Montreal
G. Blouin	- Assistant Vice-President, Labour Relations Sept-Iles
A. Belliveau	- Director, Human Resources, Sept-Iles
J. Rondeau	- Counsel, Sept-Iles
J. Nadeau	- Superintendent, Transportation, Sept-Iles
D. Seymour	- Superintendent, Human Resources, Newfoundland
P. Caouette	- Counsel, Montreal

And on behalf of the Union:

R. Cleary	- Counsel, Montreal
B. Arsenault	- General Chairman, Sept-Iles
R. Collins	- Witness

AWARD OF THE ARBITRATOR

The Union claims that the employees assigned to way freight service are entitled to the daily guarantee in Article 39.02 for every day

when they are available, whether or not they are working. That is to say, in practice, that they enjoy the protection of the guarantee on a 7 day a week basis, and should effectively be paid for every day.

Article 39 of the Collective Agreement deals with the method of payment of employees and reads, in part, as follows:

39.01 Employees in work train service will be guaranteed not less than one hundred and twenty-eight (128) miles or eight (8) hours for each day (including legal holidays and Sundays) exclusive of overtime. When working with the auxiliary, work train rates will be paid.

39.02 Employees in assigned way freight or road switcher service shall be guaranteed not less than one hundred and twenty-eight (128) miles or eight (8) hours for each calendar working day (including legal holidays) they are available for service exclusive of overtime.

The grievance is based on the application of Article 39.02. It appears to the Arbitrator that the intention of this article becomes more evident when one compares it with Article 39.01. The parties are agreed that this latter article, which is expressed in terms of a guarantee "for each day (including legal holidays and Sundays)", gives employees assigned to work train service a guarantee of seven days a week. On the other hand, Article 39.02 gives the guarantee payment on the basis of "each calendar workin day". At first glance, this distinction seems to indicate that the parties had the intention of limiting the guarantee payment of Article 39.02 by virtue of the availability of an employee during his work day.

Nevertheless, it is not necessary to settle the question in this manner. The Union has the burden of proof. It is up to it to establish the facts which would support the grievance and, in particular, the claim of the Union's representative to the effect that the Company had for a long time followed a practice of indicating the usual days of work in the general bulletin posted every six months relating to the assignment to way freight service. It is evident that such a practice, of precisely stating beforehand the days of work of an employee, would give him the possibility of receiving the guarantee payment for each occasion when his train was either annulled or postponed to the next day.

The documentary evidence doesnot support the claim of the Union. In light of the evidence entered by the Company, and of the statement of Superintendent J. Nadeau, it is established that the general practice of the Company, for some years, is to not indicate the work days of way freight crews at the time of the general bulletin of the jobs under Article 34.01(). The evidence of Mr. Nadeau also shows that the payment of the guarantee was never paid in the manner claimed by the Union.

On the whole, the preponderance of the evidence does not support the position of the Union and for these reasons the grievance must be dismissed.

January 13, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR