CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1914

Heard at Montreal, Thursday, 13 April 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim that the Company violated Article 22.4 of Agreement 10.1.

JOINT STATEMENT OF ISSUE:

Gang 127 was compromised of two employees, a Helper and Group I Machine Operator who were assigned to operate a Brush Cutter Machine from 21 May to 12 December in 1986.

The Brush Cutter operated in continuous service for eight hours each work day and in accordance with the terms of the Agreement both employees were provided with a twenty minute meal period without loss of pay.

Mr. Glenn Nowag occupied the Helper position from the start-up of the Brush Cutter operations and was awarded the Group I Machine Operator position on 7 July 1986. He held this position until the shut down of Gang 127 on 12 December 1986.

The Brotherhood contends that Mr. Nowag was not allowed one hour for cooking supper which is provided for in Article 22.4. The Brotherhood therefore requested that the grievor be compensated 100 hours at his basic rate of pay.

The Company denies the Brotherhood's contention and declines their request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) G. SCHNEIDER	(SGD) W. W. WILSON
System Federation	for: Assistant Vice-President
General Chairman	Labour Relations

There appeared on behalf of the Company:

G. Blundell	- Labour Relations Officer, Montreal
T. D. Ferens	- Manager, Labour Relations, Montreal
A. Watson	- Labour Relations Assistant, Montreal
M. M. Boyle	- Labour Relations Officer, Montreal
N. Dionne	- Labour Relations Officer, Montreal
W. Donnelly	- B&B Master, Winnipeg

And on behalf of the Brotherhood:
R. Liberty - Secretary/Treasurer and General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

Article 22.4 of the Collective Agreement provides as follows:

> 22.4 In boarding outfits, one man shall be allowed one hour for cooking dinner and one hour for cooking supper. This will not apply where meals are furnished by boarding car contractor or where a foreman is boarding the men.

Article 22.5 further provides:

> 22.5 In boarding gangs time will be increased sufficiently for him to perform this duty. Foremen shall be held responsible if there is any excess time devoted to cooking. Employees performing this service shall not be paid for time in excess of that period on any day to other labourers in his gang. Notwithstanding the provisions of Article 22.4, the Company may elect to employ a suitable cook.

The Company submits that the term "boarding outfits" as used in Article 22.4 refers only to the more elaborate type of white fleet accommodation provided for larger gangs, which includes separate living and cooking facilities, as opposed to a single white fleet car with batching facilities, also referred to as a BKD unit. The larger units typically contain a number of cars with sleeping accommodation, a wash car which includes wash up facilities and a shower and a cook car as well as a dining car.

The Company's own submission causes the Arbitrator some difficulty. Firstly, its brief describes "boarding outfits" as containing a number of cars including "a cook car staffed by a full time cook", whereas the BKD unit is described as a single self-contained unit with sleeping, kitchen and dining facilities which is supplied ".. to smaller gangs where it is not economical to supply a full time cook." It appears to the Arbitrator inconsistent to define boarding outfits as multi-car units which include a car staffed by a full time cook while at the same time asserting that the purpose of Article 22.4 is to provide time for a crew member assigned to such a boarding outfit to do the cooking for himself and the other members of his crew. It would appear more logical to conclude that the phrase "boarding outfits", as utilized in Article 22.4, was more properly intended to apply to those units which do not have a cook assigned to them, as is the case with batching or BKD units, such as the one utilized in the case at hand. It appears to the Arbitrator that the circumstances of larger gangs is separately addressed in Article 22.5

There is further reason to doubt the persuasiveness of the Company's interpretation of the phrase "boarding outfits" as it appears in Article 22.4. While the language is not identical, Article 2.11, which establishes the employees' start time and end time for the purposes of remuneration provides as follows:

2.11 Employees' time will start and end at designated tool houses, outfit cars or shops. Where local conditions necessitate it temporarily, other designated assembly points may be established by mutual agreement between the appropriate representatives of the Brotherhood and the Company.

Clearly in this provision the term "outfit cars" is intended to designate any form of white fleet accommodation, be it a multi-car unit or a single car batching facility. There is, in that sense, nothing intrinsic in the use of the word "outfit" to suggest that the parties intended that it should be restricted to multi-car boarding units. Nor can the Arbitrator accept that in the circumstances of the instant case there is any significant impracticality with respect to the interpretation advanced by the Brotherhood. It is common ground that the Brush Cutter operator could at all material times continue to function while the helper took the time allowed for the preparation of the meal for both of them. Nor, given the conflicting assertions of the parties with respect to the application of this provision in the past, is there any compelling basis to resolve this grievance in favour of the Company on the basis of past practice.

The Arbitrator finds that the interpretation of the Brotherhood must prevail. The language of Article 22.4 does not, on its face, include any qualification with respect to the size of the gang. Having regard to the purpose of the article it must deemed to have been intended to apply to those boarding units which not normally have a full time cook. Moreover, having regard to the use of the word "outfit" in the greater context of the Collective Agreement, there is no basis on which to conclude that the term boarding outfits was intended to mean only multi-car white fleet units.

For these reasons the grievance is allowed. The claim of the grievor shall, subject to the operation of Article 19.4 with respect to retroactivity, be paid from the period of August 8, 1986 until the end of the grievors' work season. I retain jurisdiction with respect to any possible dispute regarding the amount of compensation to be calculated.

April 14, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR