CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1949

Heard at Montreal, Thursday, 14 September 1989

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The non-payment of subsistence allowance to spareboard (rover) sleeper teams under the terms of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

The Union contends that all other Linehaul employees regardless of the position they hold (single, spareboard, pool or sleeper teams) are being paid the allowance and this should also include spareboard sleeper teams.

The Company maintains that they are not in violation of the collective agreement.

The Union maintains that under the terms of the Collective Agreement all mileage-rated highway drivers are entitled to the subsistence allowance whether working as single or sleeper vehiclemen.

To date the Company has declined the Union's request.

FOR THE UNION:	FOR THE COMPANY:
(Sgd.) M. W. FLYNN	(Sgd.) B. D. NEILL
for: GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS
SYSTEM BOARD OF ADJUSTMENT 517	

There appeared on behalf of the Company:

C. W. Peterson	- Counsel, Toronto
B. F. Weinert	- Manager, Labour Relations, Toronto
J. Myhre	- Regional Manager, Transportation,

And on behalf of the Union:

M. Church	- Counsel, Toronto
J. Crabb	- Secretary/Treasurer, Toronto
M. Gauthier	- Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

At issue is the interpretation of Article 33.23.14 of the Collective Agreement which provides as follows:

> 33.23.14 All scheduled sleeper team drivers will receive a subsistence allowance of $12.00 per day on the basis of 24 hours, or major portion thereof, from the time of departure from the home terminal.

The facts are not contested. The Company's trucking operations includes drivers who work in two-person teams driving tractors which contain a sleeping accommodation. There are two types of such teams, eleven of which are spareboard sleeper team drivers and eleven of which are sleeper team drivers assigned to regular scheduled runs. The Union maintains that Article 33.23.14 applies to both groups, and grieves the Company's failure to provide the $12.00 subsistence allowance to spareboard sleeper team drivers.

Alternatively the Union relies on Article 33.22.6 which provides:

> 33.22.6 A subsistence allowance of $12.00 per day will be provided to all mileage-rated highway vehiclemen when on a layover, excluding sleeper-cab mileage rated drivers who are covered under paragraph 14 of that clause in this Special Agreement.

It is common ground that Paragraph 14 referred to in the above provision is Article 33.23.14 reproduced above.

The following two provisions are also pertinent to the resolution of this dispute:

> 33.22.3 Spareboard mileage rated highway vehiclemen when assigned to regular schedule runs will receive the same consideration as the regular schedule mileage rated highway vehiclemen.
>
> 33.23.13 Unless otherwise stated, sleeper-cab drivers will be subject to all provisions of the Collective Agreement as it applies to mileage-rated drivers. The following clauses of the Collective Agreement do not apply to sleeper-cab drivers: 33.7, 33.17, 33.18, 33.19.

In the Arbitrator's view the instant case is best approached by interpreting the terms of Article 33.23.14 giving the words of that provision their most natural meaning in light of the factual context in which they operate. If the Union's first position is accepted the article can be read by simply removing the word "scheduled" from it. The presence of that word is, however, consistent with the position of the Company to the extent that there are two kinds of sleeper team drivers - those who are scheduled on regular runs and those who are

not scheduled, and work off the spareboard. In the Arbitrator's view it is counter-intuitive to ascribe to the word "scheduled", in that context, application to a group of employees who are not sleeper team drivers on scheduled runs. In other words, the Company's interpretation of Article 33.23.14 is more consistent both with the reality of the workplace and the normal grammatical meaning of the word "scheduled".

The Arbitrator also has some difficulty with the alternative argument of the Union. Article 33.22.6 provides a subsistence allowance for all drivers "when on a layover" with the exception of sleeper-cab drivers covered under Article 33.23.14. It appears to be common ground that as a general rule that language applies to nonsleeper-cab drivers who are required to stay away from their home terminal, on layover. The Union's suggestion that the term "layover" would extend to cover sleeper-cab drivers who are resting or sleeping while their unit is on the road under the control of their partner is plainly out of keeping with the general understanding of the meaning of that word. In the Arbitrator's view, absent some clear indication to the contrary in the terms of the Collective Agreement, such a construction cannot be accepted.

I nevertheless have difficulty accepting the position of the Company in its entirety with respect to the application of Article 33.22.6. The parties do not dispute that on some occasions mileage-rated sleeper-cab drivers are required to lay over on their trips. If Article 33.22.6 is read in a normal grammatical way, it appears to provide a subsistence allowance to all mileage-rated highway vehiclemen except those sleeper-cab mileage-rated drivers covered by Article 33.23.14. By logical deduction, it would seem inescapable that sleeper-cab mileage-rated drivers who are not covered under Article 33.23.14 are entitled to the protections of 33.22.6. That is to say, when those drivers are on a layover, being mileage-rated highway vehiclemen who are not excluded by the terms of Article 33.22.6, they are entitled to the subsistence allowance of $12.00 per day. While it is true, as counsel for the Company suggests, that the wording of these provisions is not the most elegant, and inconsistencies unexplainable other than that they are the result of bargaining appear unavoidable whatever interpretation is adopted, the Arbitrator is satisfied that any uncertainty is best resolved by adopting the normal meaning of ordinary language.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds and declares that spareboard sleeper teams are entitled to the subsistence allowance of $12.00 provided under Article 33.22.6 when on a layover. For the reasons related above, they are not entitled to the protections accorded to scheduled sleeper team drivers under Article 33.23.14.

September 15, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR