CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2406
Heard at Montreal, Thursday, 14 October 1993
concerning
ONTARIO NORTHLAND RAILWAY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION - CANADA]
DISPUTE:
A claim of two (2) additional days' pay at the minimum allowance rate per fourteen (14) day pay period for the Motor Coach Operator on Crew 37.
JOINT STATEMENT OF ISSUE:
Article 6.1 of Agreement No. 11 states:
Employees regularly assigned as Motor Coach Operators who are ready for duty the entire month and who do not lay off of their own accord will be guaranteed ten days' pay (at the operator's rate) and four assigned rest days in each 14 day period.
It is the contention of the Union that compensation for assignment Crew 37 is in violation of article 6.1 in that the employee receives 8 days' work and 6 assigned rest days. The Union, therefore, requests compensation for the two additional rest days on the assignment.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) K. L. MARSHALL	(SGD.) P. A. DYMENT
GENERAL CHAIRMAN	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:
M. J. Restoule - Manager, Labour Relations, North Bay
M. Bernardi - Supervisor Bus Operations, North Bay
And on behalf of the Union:
Lloyd Marshall - General Chairperson, North Bay
P. Ross - Local Chairperson, North Bay

AWARD OF THE ARBITRATOR

In addition to article 6.1, reproduced in the Joint Statement of Issue, article 7.1 is pertinent to the resolution of the grievance, given the submissions made by the Company. It provides, in part, as follows:

7.1(a) Pay allowances shall be set up for each scheduled assignment posted by order and notice showing duties and headquarters. The day's work shall be arranged to suit the requirements of the service. As far as practicable regular assignments will be contained within a spread of eleven hours.

7.1(b) Kilometres shall be calculated from terminal to terminal. An allowance of 40 kilometres will be added to the actual mileage of each assignment as compensation for reporting time, final time, garage time and loading time. Half time will be allowed for periods released from duty during the day. No time shall be deducted unless the operator is relieved of all responsibility and the release period is not less than thirty minutes at any one time. The minimum allowance for a tour of duty on any assigned run will be 384 kilometres. [emphasis added]

The Company submits that the guarantee expressed in article 6.1 is meant to ensure that employees will be paid a minimum amount, calculated over ten days. Its representative submits that the minimum amount payable is derived from the provisions of article 7.1(b) where reference is found to a minimum allowance for a tour of duty on any assigned run, in the amount of 384 kilometres. According to the Company's interpretation, the guarantee of ten days' pay, found in article 6.1 is not the same as a guarantee of ten days' work, based on the established mileage of a given assignment, unless such assignment should fall below the minimum provided in article 7.1(b).

It appears to the Arbitrator that both positions argued by the respective parties have a certain plausibility. On the one hand the Company submits that article 6.1 is intended to provide only a minimum guarantee of ten days' pay, and that it must be read in concert with article 7.1(b) which establishes the minimum allowance for a single tour of duty as 384 kilometres. On that basis it submits that because the assignment which is the subject of this grievance exceeded ten times the minimum allowance, or 3,840 kilometres in the fourteen day period, there has been no violation of the article 6.1.

On the other hand, the Union submits that the minimum allowance provided for in article 7.1(b) has no direct bearing on the concept of a guaranteed day's pay within article 6.1, save in the event of a rest day when there is no assigned mileage. It submits that a day's pay must be taken as the pay allowance on a mileage basis for a given assignment, in accordance with article 7.1 governing assigned service.

While the matter is not without some difficulty, the Arbitrator is impressed with the representation of the Union that in fact the interpretation which it advances was applied for a substantial number of years by the Company. Significantly, this is confirmed in a letter written by the Company's General Manager to the General Chairman of the Union, on February 24, 1983 in relation to the claim of employee McAlpine. In that letter the General Manager elaborates a calculation of the employee's guarantee, making allowance for a vacation period. The calculation so applied appears to support the interpretation advanced by the Union in the case at hand. The guarantee is calculated on the employee's full assignment for the pay period, and not on the basis on the minimum allowance provided in article 7.1(b).

In the Arbitrator's view, the evidence of past practice related by the Union, and reflected in the letter of February 24, 1983 is the most compelling evidence available to resolve the dispute at hand, and must, on the balance of probabilities, be taken as reflecting the intention of the parties with respect to the application of article 6.1 of the collective agreement.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the employees assigned to Crew No. 37 be paid their claim for two days pay in each two week pay period to July 7, 1993.

October 15, 1993 (sgd.) MICHEL G. PICHER
ARBITRATOR