CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2428

Heard in Montreal, Wednesday, 15 December 1993
concerning
CANADIAN PACIFIC LIMITED

and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]

DISPUTE:

Cancellation of Conductor Marlow and crew working in coal train service prior to leaving Sparwood on a straightaway trip to Fort Steele.

JOINT STATEMENT OF ISSUE:

Conductor A.G. Marlow and crew were ordered for 1450, October 3, 1988, at Sparwood. The crew was called straightway unit coal train service for loading at Elkview on initial terminal time. Conductor Marlow's crew was cancelled at Sparwood after being on duty 6 hours 10 minutes. The relief crew arrived at Fort Steele at 0155, and were off duty at Cranbrook at 0250.

Conductor Marlow claimed 177 running and constructive miles to Fort Steele.

The Company reduced this ticket by 77 miles claiming the crews were cancelled under article 25, and in accordance with article 9(4).

It is the Union's contention that the practice of cancelling crews at Sparwood, when such crews have sufficient time to complete their trip to Fort Steele, is in conflict with the understanding reached in accordance with the Memorandum of Agreement in establishing Sparwood as an away-from-home terminal for Cranbrook crews.

The Union further contends that the practice of not allowing crews to continue with their trip, when sufficient running would enable crews to reach their objective terminal, is in conflict with the intent of article 25.

FOR THE UNION: FOR THE COMPANY:
(SGD.) L. O. SCHILLACI (SGD.) R. WILSON
GENERAL CHAIRMAN FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, IFS

There appeared on behalf of the Company:

R. E. Wilson - Labour Relations Officer, Vancouver
R. Hunt - Labour Relations Officer, Montreal
B. Scott - Labour Relations Officer, Montreal
R. M. Andrews - Labour Relations Officer, Vancouver

And on behalf of the Union:

J. Ken Jeffries - Local Chairperson, Cranbrook
L. O. Schillaci - General Chairperson

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. On October 3, 1988 Conductor A.G. Marlow and his crew were ordered for 14:50 at Sparwood. Their scheduled duties involved the

loading of a coal train at the Elkview mine site, followed by straightway service to Fort Steele. It appears that in the past reduced crews running to Fort Steele have required more than the maximum of ten hours to make the trip, as contemplated under article 9.4 of the collective agreement, thereby giving rise to a number of protests from the Union's local chairperson. As a result, the Company was on clear notice that crews working in coal train service from Sparwood to Fort Steele should not be made to work in excess of the maximum permissible period of ten hours.

The material establishes that on October 3, 1988 the rail traffic controller estimated that a delay in loading coal at the Elkview mine placed Conductor Marlow's crew at risk of exceeding the ten hour limit, should they be required to complete the run to Fort Steele. The evidence before the Arbitrator suggests that, on average, the assignment given to the grievor and his crew requires some nine hours and ten minutes to complete. On the day in question, having regard to the anticipated train meets and other delays, the rail traffic controller decided that it would not be feasible for Conductor Marlow's crew to complete the run in compliance with article 9.4 and Appendix B-10 of the collective agreement. Consequently, after the crew had been on duty six hours and ten minutes, they were relieved by another crew at Sparwood.

The evidence which subsequently unfolded proved the projections of the rail traffic controller to be correct. In the end, the time from the call of Conductor Marlow's crew and the relief crew going off duty was some twelve hours. In the result, the evidence reveals that the decision taken by the Company was made in good faith, with a view to complying with the requirements of the collective agreement, and in particular the ten hour duty limit for reduced crews. It may also be noted that the cancelling of the grievor's crew was not resorted to as a cost cutting measure. In the end, the Company found itself obliged to pay the grievor's crew a minimum of 100 miles, and an equal number of miles to the relief crew, rather than the total of 177 miles which would otherwise have been payable to Conductor Marlow and crew. On the basis of the facts disclosed, the Arbitrator cannot sustain the grievance.

A further comment may be appropriate in the case at hand, as it appears that similar grievances are yet unresolved. At the hearing the Company's representative quite properly conceded that it would be abusive, and a violation of the collective agreement, for management to pre-arrange the cancellation of a crew working in the circumstances of Conductor Marlow's crew without specific regard to the circumstances governing the movement of the crew's train. For example, it was agreed at the hearing that if a crew were cancelled at Sparwood after only two or three hours on duty, where there is little substantial basis to believe that they would not compete the run to Fort Steele within the ten hour limit, there would be a departure from the understanding of the parties as reflected in the collective agreement. For the reasons touched upon above, however, no such circumstance is disclosed in the case at hand. The Arbitrator is satisfied that in the instant case the decision of the Company was made for proper cause, having regard to the delay incurred during the loading process, combined with the anticipated time which would be required to

reach Fort Steele.

For the foregoing reasons the grievance must be dismissed.

17 December 1993_____

MICHEL G. PICHER
ARBITRATOR