CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2476

Heard in Montreal, Wednesday, 11 May 1994

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION
EX PARTE

DISPUTE:

A matter involving the payment of subsistence allowance to linehaul drivers under the provisions of Article 33.23 .14 of the current collective agreement and Clause 11.01 of Appendix A since January 1, 1993.

EX PARTE STATEMENT OF ISSUE

The Union, during the grievance procedure, raised the cogent argument in review of the case file material that these linehaul drivers are clearly entitled to receive subsistence allowance under the provisions of article 33.23.14 of the collective agreement.

The Union assets that article 33.23.14 states, in part, "... all 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 Union asserts that Clause 11.01 of Appendix A does not state that drivers whom [sic] do not layover will not receive subsistence allowance payment, on the contrary, it states that when drivers are on layover, they will receive subsistence allowance. The Union maintains that both of these provisions compliment [sic] each other and are not incongruous.

The Company to date has declined to compensate the linehaul drivers for subsistence allowance payment as requested by the Union on their behalf, and further, by their letter issued on, or about, April 8th 1993, have attempted to retroactively collect sub-allowance payments made in payroll periods 1 through 7, 1993, to these linehaul drivers.

The Union is requesting a declaration from the Arbitrator respecting the proper interpretation and application of Article 33.23.14 and additionally, is seeking compensation for all linehaul drivers entitled to subsistence allowance payment retroactive to January 1, 1993.

FOR THE UNION:
(SGD.) M. W. FLYNN
FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	_ Counsel, Toronto
B. F. Weinert	_ Director, Labour Relations, Toronto
B. D. Neill	_ Vice-President, Human Resources, Toronto

And on behalf of the Union:

H. Caley	_ Counsel, Toronto
D. Dunster	_ Executive Vice-President, Toronto
J. Crabb	_ Executive Vice-President (Ret'd)

AWARD OF THE ARBITRATOR

The grievance alleges a violation of article 33.23.14 of the collective agreement which provides as follows:

> **33.23.14** All 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.

It is common ground that the language of the above provision was negotiated during the renewal of the collective agreement in November of 1992. The prior collective agreement contained the word "scheduled" in relation to sleeper team drivers, a provision which was previously found to exclude spareboard drivers from access to the subsistence allowance, except on a layover. (*See **CROA 1949***)

It is common ground that the Company has not paid sleeper team drivers the subsistence allowance in accordance with article 33.23.14. It takes the view that the provisions of article 33.23.14 are overridden by the terms of Appendix A to the collective agreement, which was negotiated in tandem with the agreement in November of 1992. The following provisions of Appendix A are pertinent to the resolution of the grievance:

> **1.01** It is expressly understood and agreed that the wording contained in this memorandum of understanding is solely applicable to Linehaul operations.
>
> **2.01** It is expressly understood and agreed that all terms of the collective agreement shall apply except where otherwise indicated in this memorandum of understanding
>
> **11.01** It is expressly understood and agreed that the Company will provide a subsistence allowance of $12.00 per day to all Linehaul drivers when on a layover.
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> **17.01** It is understood that the parties have engaged in this memorandum of understanding solely in recognition of, and to address the current adverse economic/competitive forces presently affecting the Company's Linehaul Operations.

It is not disputed that Appendix A was negotiated, as reflected in article 17.01, for the purpose of providing certain financial relief to the Company in respect of labour costs at a time critical to the viability of its operations. The appendix is, in short, an extraordinary measure, contemplated for the short or medium term, to see the parties through a difficult time. A significant aspect

of the appendix is that it provides for the payment of linehaul drivers, including sleeper team drivers, on a flat rate basis, rather than on the basis of mileage rated payments previously provided under the terms of the collective agreement. The implementation of the flat rate system of payment, along with the elimination of certain aspects of remuneration in respect of drops and hooks as well as terminal time, represents a general belt tightening for all linehaul drivers.

The issue is whether by the terms of Appendix A, and the conversion of mileage rated linehaul drivers to flat rates, the parties' agreement intended by the terms of clause 11.01 to establish a comprehensive provision in respect of the payment of subsistence allowance. The Company takes the view that it does, and that for all linehaul drivers, including sleeper team drivers, subsistence allowances are intended to be payable only in respect of layovers.

Counsel for the Union submits that that interpretation is not supportable. He notes, firstly, that the likelihood of a layover is rare, particularly in the case of scheduled sleeper team drivers whose very method of operation involves continuous travel in two person teams, with no stops or layovers save in unusual circumstances, such as the case of a mechanical breakdown. Secondly, he points to the change in language agreed with respect to article 33.23.14, arguing that the parties would not have intended to alter the language of a provision which would effectively be overridden and rendered meaningless by the more general operation of Appendix A.

The arguments advanced on behalf of the Union are obviously supportable upon a certain reading of the provisions of the collective agreement, taken together with Appendix A. However, in the end, the Arbitrator is more persuaded by the submissions by Counsel for the Company. From a purposive standpoint, Appendix A to the collective agreement represents an extraordinary departure to deal with severe adverse economic conditions which faced the parties at the time of their negotiation. The general rollback of wages and conversion of mileage rated linehaul drivers to a system of flat rate payments represents a cost saving measure of great significance, entered into knowingly by both parties. While Appendix A contains a number of provisions, the flat rate payment for linehaul routes, with the inclusion of provisions for the negotiation and/or arbitration of those rates, is a cornerstone provision of the parties' memorandum of understanding.

When article 33.23.14 of the collective agreement is read in isolation, it appears to support the grievance advanced by the Union. It is trite to say, however, that provisions of a collective agreement must be read in the full context of the document. A review of the broader provisions of the collective agreement confirms that article 33.23.14 is framed in contemplation of sleeper team drivers being mileage rated. That is expressly reflected in the provisions of article 33.22.6 which reads as follows:

> **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 the Special Agreement.
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> (emphasis added)

As the language of the foregoing provision reflects, it was the understanding of the parties that sleeper cab drivers entitled to the subsistence allowance provided in article 33.23.14 are "sleeper-cab mileage rated drivers". For the reasons related above, under the memorandum of understanding, Appendix A to the collective agreement, there are no sleeper cab mileage rated drivers, as all linehaul drivers are, for the duration of the memorandum of understanding, paid on a flat rate basis. In the Arbitrator's view, the language of article 33.23.14, as clarified by the terms of article 33.22.6, tends to support the view of the Company that the negotiation of Appendix A, and the conversion of all linehaul drivers, including sleeper team drivers, to a flat rate represents a conscious departure from the general terms of the collective agreement, including the terms of article 33.23.14.

This is further confirmed by the provisions found within Appendix A which specifically deal with sleeper team drivers. For example, clause 6.01 provides a 180 minute threshold for the payment of terminal delay time to sleeper team drivers. It would, in the Arbitrator's view, have been equally open to the parties to provides a specific protection to sleeper team drivers who are no longer mileage rated, in respect of a subsistence allowance, if that had been their intention. The absence of such language suggests, in my view, that the memorandum of understanding did not have such an intention.

In the Arbitrator's view the amendment of article 33.23.14 of the collective agreement to eliminate the word "scheduled" does not necessarily support the Union's argument that the parties intended that provision to operate in tandem with Appendix A. It is common ground that Appendix A was negotiated to deal with a particular short term problem, and that in the event of its termination the parties are to revert to the general terms of the collective agreement. In that context it is not unreasonable for the parties to have negotiated changes in the language of the collective agreement, even though those changes might have been overridden, for a time, by the terms of Appendix A. While the perception and position of the Union is understandable, and the matter is not without some difficulty, a review of the whole of the documents is, in the Arbitrator's view, more supportive of the interpretation advanced by the Company.

For the foregoing reasons the grievance must be dismissed.

13 May 1994

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MICHEL G. PICHER
ARBITRATOR