Canadian Railway Office of Arbitration
Case No. 2586
Heard in Montreal, Wednesday, 15 February 1995
concerning
Canadian Pacific Express & Transport
and
Transportation Communications Union
ex parte
Dispute:

Winnipeg based sleeper teams operating west of the Ontario-Manitoba border are not being paid in accordance with intra or inter-provincial rates shown on page 93 of the current collective agreement.

Ex Parte Statement of Issue

The Union has argued throughout the grievance procedure that sleeper teams working in Western Canada, who do not cross the Manitoba-Ontario border, must be paid the applicable rates as published on page 93 of the current collective agreement. The Company disagrees, they insist they had an arrangement with the previous Union executive that allows them to pay the rate shown on the temporary bulletin issued in Winnipeg, September 11, 1992.

The present Union executive argues that if it had been the intention of both parties to maintain that rates shown on the temporary bulletins, they had several months during negotiation and prior to the signing of the agreement in December 1992 to incorporate that understanding in the current collective agreement.

The Union continues to argue in the absence of documented proof to the contrary, the terms of the current collective agreement must prevail. Accordingly, the Union requested the sleeper teams be compensated in accordance with rates published on page 93.

The Company declined the Union's request.

for the Union:
(sgd.) D. J. Dunster
Executive Vice-President - Trucking

There appeared on behalf of the Company:
M. D. Failes– Counsel, Toronto
B. F. Weinert – Director, Labour Relations, Toronto
J. H. Barrett – Director, Linehaul, Toronto

And on behalf of the Union:
P. Sadik – Counsel, Toronto
D. J. Dunster – Executive Vice-President, Ottawa
J. J. Boyce – National President, Ottawa

award of the Arbitrator

The core issue in the case at hand is whether the parties are bound to an understanding of the operation of the collective agreement which is, arguably, different than the literal wording of its provisions governing the payment of sleeper team drivers. Upon a careful review of the material filed, the Arbitrator is compelled to conclude that there was an understanding reached between the Company and the Union, it would appear through a retired Union officer, whereby sleeper teams engaged in multi-destinational, transcontinental routes would be paid in accordance with the flat rates based on the Ontario/Quebec rate

of 35.055 cents per mile. In April of 1992 that arrangement was put into place for positions eventually posted in Winnipeg in September and October of 1992. In the fall of 1992, during negotiations for a new collective agreement, the parties agreed to a flat rate system to be implemented across the country, as reflected in Appendix A to the agreement, based on the framework of the March 27, 1992 agreement, or letter of understanding, which first established the 35.055 cents per mile rate for multi-destination teams.

The present grievance, which emanates from Winnipeg, is understandable. The words of the collective agreement, including Appendix A governing linehaul operations, including sleeper team linehaul rates, would be literally interpreted to limit the payment of 35.055 cents per mile, plus 3%, to transcontinental runs which involve crossing the Manitoba/Ontario border. The Arbitrator is satisfied, however, that a different understanding was reached between the parties, and carried over into the operation of the sleeper team linehaul rates found in Appendix A to the collective agreement. That understanding reflects the reality that better than 80% of the runs worked by sleeper team linehaul drivers are on transcontinental routes which do cross the Manitoba/Ontario border. With two exceptions, involving routes between Vancouver and Golden, B.C. as well Calgary and Kamloops, the parties proceeded on the understanding that sleeper team linehaul rates payable to transcontinental teams under paragraph a) appearing on page 93 of the collective agreement would be paid to sleeper teams working transcontinental routes, being either the Trans-Canada Highway or a designated parallel route in the United States, even though they might not cross the Manitoba/Ontario border on a given assignment.

In the result, the Arbitrator is satisfied that the position advanced by the Company is consistent with the understanding reached between the parties, which originated in 1992 and carried forward into the administration of the collective agreement after January 1, 1993. For these reasons the grievance must be dismissed.

17 February 1995 _____

MICHEL G. PICHER
ARBITRATOR