

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2759

Heard in Montreal, Thursday, 11 July 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Claims submitted by F.M. Moir in accordance with Article 72 on various dates between 05 June 1992 and 04 August 1993, while forced under the shortage provisions of Agreement 4.16.

EX PARTE STATEMENT OF ISSUE

On 03 June 1992, Mr. F.M. Moir was on the Toronto North Furlough Board. Because of a shortage of employees in Toronto South, Mr. Moir was forced to the Toronto South Spareboard.

While forced to the Toronto South Spareboard, Mr. Moir claimed the meal allowance provisions of Article 72.

The Union submits that Mr. Moir is entitled to the claims submitted for the meal allowances while he was forced to the Toronto South Spareboard as per Article 72.

The Company disagrees with the Union and declined payment of the claims.

FOR THE COUNCIL:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRMAN

There appeared on behalf of the Company:

| | |
|------------------|---|
| O. Lavoie | – System Labour Relations Officer, Montreal |
| S. A. MacDougald | – Manager, Labour Relations, Montreal |
| J. P. Krawec | – System Transportation Officer, Montreal |

And on behalf of the Council:

| | |
|-----------------|--------------------------------------|
| M. P. Gregotski | – General Chairperson, Fort Erie |
| W. G. Scarrow | – General Chairperson, Sarnia |
| G. Bird | – Vice-General Chairperson, Montreal |
| R. Skilton | – Local Chairperson, Toronto |

AWARD OF THE ARBITRATOR

The Arbitrator has substantial difficulty with the position advanced by the Council in this grievance. It is common ground that Mr. Moir was transferred from the Toronto North furlough board to the Toronto South spareboard. In fact, both boards involve service out of MacMillan Yard, and in the case of the Toronto South spareboard, possible service out of the Mimico Crew Centre for GO Transit service or freight service. The claim in question is made under the provisions of article 72 of the collective agreement which provides, in part, as follows:

EXPENSES AWAY FROM HOME

72.1 Except as provided in paragraph 72.3 an employee who is required by the Company to move from a main (home) terminal to another main (home) terminal where a shortage of employees exists will receive a meal allowance of \$15.00 per day where accommodations with cooking facilities are provided or \$25.00 per day where accommodations without cooking facilities are provided, where meals are not provided by the Company or at company expense.

72.2 The allowance will be paid for each calendar day such employee works or is available for work at or out of the point where the shortage exists, provided such point is not the employee's normal place of residence.

It appears manifest to the Arbitrator that the purpose of the above noted provisions is to provide to employees who are removed from their homes, in the sense of their "normal place of residence" to locations where they are in accommodations provided by the Company, with or without cooking facilities, to a meal allowance of \$15.00 or \$25.00 per day, depending on the nature of the accommodations. In the instant case Mr. Moir did not move from his residence, which at all material times remained in Burlington. Nor did he in fact move from his normal terminal of employment, at Toronto, which encompasses both MacMillan yard and Mimico. While it may be that the grievor's service was transferred from a board governed by employees from one seniority district to a board governed by employees from another seniority district, the circumstances of that transfer do not fall within the contemplation of article 72 which, by its very title, was intended to deal with "expenses away from home". There was no change in Mr. Moir's main home terminal. He was not relocated to any form of Company accommodations. He did not alter his normal place of residence. Simply put, he was not moved.

The grievance is therefore dismissed.

July 12, 1994

(signed) MICHEL G. PICHER
ARBITRATOR