

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2899

Heard in Calgary, Tuesday, 11 November 1997

concerning

Canadian Pacific Railway Company

and

**Canadian Council of Railway Operating Unions
[United Transportation Union]**

DISPUTE:

Claim of Yardmaster J.D. Hearn of Sutherland, Saskatchewan, for payment of lost wages for March 31, 1996, meal allowance for April 1, 2, 3 and 4, 1996 and transportation expenses for April 1, 2, 3, 4 and 5, 1996 which include gasoline and car rental costs. These expenses were incurred when the employee attended MQ instruction at Smiths Falls, Ontario, on April 1, 1996.

JOINT STATEMENT OF ISSUE:

The Union suggests that there is a disagreement on the application of the National Transportation Act, the Railway Act as well as the memorandum of agreement between the United Transportation Union and Canadian Pacific Railway, concerning employees west of Thunder Bay training in order to qualify in accordance with the Railway Employee Qualifications Standards Regulations.

The Union requested restitution on behalf of Mr. J.D. Hearn.

The Company contends that Yardmaster Hearn attended MQ instruction at Smiths Falls, Ontario, of his own volition and denies his claim for reimbursement of expenses.

FOR THE COUNCIL: FOR THE COMPANY:

(SGD.) J. KNOWLES

(SGD.) K. E. WEBB

FOR: General Chairman FOR: DISTRICT MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

K. E. Webb – Manager, Labour Relations, Calgary

R. V. Hampel – Labour Relations Officer, Calgary

G. S. Seeney – Manager, Labour Relations, Calgary

R. M. Smith – Labour Relations Officer, Calgary

And on behalf of the Council:

D. H. Finnon – Secretary, Saskatoon
L. O. Schillaci – General Chairperson, Calgary
B. L. McLafferty – Vice-General Chairperson, Moose Jaw
J. K. Jeffries – Vice-General Chairperson, Cranbrook
E. DeCredico – Vice-General Chairperson, Nanaimo
J. Knowles – Vice-General Chairperson, Calgary

AWARD OF THE ARBITRATOR

This grievance concerns the interpretation of article 11 of the collective agreement which relates to minimum qualification training. That article reads, in part, as follows:

11.1 Minimum Qualification Training and Examination

(a) In order to permit all employees working as locomotive engineers, trainpersons/yardpersons, and other employees required to qualify in accordance with the Railway Employee Qualifications Standards Regulations, the Company will provide training courses covering all required subjects for the occupational category involved. The location at which such training courses will be held will be determined by the Company. When employees are directed by the Company to attend such courses, they will do so in accordance with the following:

(b) Where the training location is at other than the employee's home terminal, the Company will arrange and provide appropriate transportation. Employees authorized to use their personal automobile and who elect to do so will be paid the mileage allowance provided in the collective agreement in accordance with the conditions attached thereto.

(c) With respect to employees covered by paragraph (a) above, the Company will provide accommodation which may be in hotels, motel or company facilities. Such accommodation will be in clean, single occupancy rooms and, to the extent it is practicable to do so, will include cooking facilities.

(d) Employees covered by paragraph (b) above, will be paid an allowance of \$15.00 per day on each day of the training program for meals when the accommodation provided has cooking facilities and \$25.00 per day where cooking facilities are not available.

The material before the Arbitrator establishes that while working as a crew dispatcher in the Company's then Montreal Crew Management Centre Mr. Hearn allowed his minimum qualifications as a yardmaster to lapse. It does not appear disputed that he could have avoided that result by attending training opportunities available at his then home location of Montreal.

The threshold question for the purposes of this grievance is whether, as contemplated within article 11 of the collective agreement, Mr. Hearn was in fact an employee "...required to qualify" under the Railway Employee Qualifications Standards Regulations. Insofar as the Arbitrator can discern, there was no obligation upon Mr. Hearn to qualify in respect of his yardmaster's credentials, as he was then not working in that occupation. Further, there is nothing in the evidence to suggest that there was a directive on the part of the Company compelling him to do so. While it may be that Mr. Hearn attended the MQ instructions at Smiths Falls pursuant to what he believed was a measure necessary to protect his yardmaster's seniority, the Arbitrator cannot find that in the circumstances he was either expressly or implicitly required to do so by the Company. In the circumstances I am satisfied that he did not fall within the qualifying provisions of article 11.1(a) of the collective agreement.

For these reasons the grievance must be dismissed.

November 25, 1997

(signed) MICHEL G. PICHER

ARBITRATOR