CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2913

Heard in Calgary, Thursday, 13 November 1997

concerning

Canadian Pacific Railway Company

and

Canadian Council of Railway Operating Unions [United Transportation Union]

DISPUTE:

Trainperson A.E. Singer of Cranbrook, B.C. claimed for lost income while training as locomotive engineer.

JOINT STATEMENT OF ISSUE:

On completion of the Engineer Training Program, Mr. A.E. Singer submitted a supplemental claim for lost income while in the training program, specifically conductor-only payment.

The position of the Council is that Mr. Singer is entitled to conductor-only premiums as part of his lost income.

The Company has declined the Council's request.

FOR THE COUNCIL: **FOR THE COMPANY:**

(SGD.) J. KNOWLES **(SGD.) K. E. WEBB**

for: General Chairman **for: DISTRICT GENERAL MANAGER**

There appeared on behalf of the Company:

R. M. Smith – Labour Relations Officer, Calgary

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

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

R. V. Hampel – Labour Relations Officer, Calgary

B. P. Scott – Labour Relations Officer, Calgary

And on behalf of the Council:

M. Church – Legal Counsel, Toronto

L. O. Schillaci – General Chairperson, Calgary

B. L. McLafferty – Vice-General Chairperson, Moose Jaw

J. K. Jeffries – Vice-General Chairperson, Cranbrook

J. Knowles – Vice-General Chairperson, Calgary

E. DeCredico – Vice-General Chairperson, Nanaimo

D. H. Finnson – Secretary, Saskatoon

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AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that there is no provision within the collective agreement dealing with the payment of employees engaged in the locomotive engineer training program. There does, however, appear to have been an understanding over the years, originating in a letter of Mr. Robert Colismo, then Manager, Labour Relations, originally dated December 17, 1971, as amended in a further letter of September 13, 1974 which reads, in part, as follows:

> My letter of December 17, 1971 provided that candidates who completed the training program and became qualified would be reimbursed the difference between the amount they were paid per week and the earnings they would have earned during the training program. Experience encountered since the inception of the training program has proved this to be totally impracticable. It has given rise to insurmountable administrative problems. Trainmen claim that at certain periods they could have held particular assignments or temporary vacancies. Assignments or temporary vacancies, they claim, that they could have held at a very high rate of frequency. As a result it is not possible to keep records of the earnings they would have earned had they worked as trainmen during the training period.
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> The only practical and equitable solution to this problem and the one that will be implemented for employees who are now undergoing training or who enter the training program in the future is the following:
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> 1. An employee who at the time of entering the training program was employed as a Conductor will be paid the difference between the total of weekly payments and the earnings that would have accrued from the maximum mileage of 3800 miles per month at the Conductor's through freight rate of pay during the training period.
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> 2. An employee who at the time of entering the training program was employed as a brakeman will be paid the difference between the total of weekly payments and the earnings that would have accrued from the maximum mileage of 3800 miles per month at the brakeman's through freight rate of pay during the training period.

There is nothing within the collective agreement or any document negotiated between the parties to support the Council's assertion that Mr. Singer is entitled to claim allowances in relation to conductor-only service, presumably based on some speculation as the runs which he would have been assigned. It is evident that the theory advanced by the Council plainly goes contrary to the purpose and approach reflected in the letter of September 13, 1974, the object of which was to provide a simple mechanical formula for computing the payment of employees, precisely to avoid the speculative computation of numerous contingencies.

It is, of course, open to the Council to negotiate provisions within the collective agreement dealing with the compensation of locomotive engineer trainees under the more recently established conductor-only system. For the Arbitrator to attempt to do so, however, would plainly involve amending the terms of the parties' existing understanding, a matter which is beyond his jurisdiction.

For the foregoing reasons the grievance must be dismissed.

November 25, 1997 **(signed) MICHEL G. PICHER**

ARBITRATOR