CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3163
Heard in Calgary, Wednesday, November 15, 2000
Concerning
CANADIAN PACIFIC RAILWAY COMPANY
And
CANADIAN COUNSEL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:
The reduction of a spareboard guarantee by an amount equal to what was earned by Trainperson M.L. Douglas for a familiarization trip taken on April 3, 1999.

JOINT STATEMENT OF ISSUE:
On April 3, 1999, Coquitlam Trainperson M.L. Douglas was called to perform a familiarization trip in accordance with a CN/CP Co-Production exercise. His spareboard guarantee was reduced by the amount of miles paid for this familiarization trip.

The Council contends it has been previously agreed the miles made for such familiarization trips would be non-chargeable under the terms and conditions of afflc~e 16(f) of the collective agreement and therefore not to be used to reduce a protected trainperson's spareboard guarantee, as outlined in clause 1.0 of the Trainpersons' Road and Common Spareboard Guarantee agreement.

The Company's position is that Mr. Douglas' spareboard guarantee was properly reduced by the miles paid for the familiarization trip.

FOR THE COUNCIL:
(SGD.) D. H. FINNSON
FOR: GENERAL CHAIRPERSON
Appearing on behalf of the Company:
J. Copping
C. M. Graham
G. S. Seeney
Appearing on behalf of the Council:
L. 0. Schillaci
D. H. Finnson
G. R. Crawford
R. Van Pelt

FOR THE COMPANY:
(SGD.) C. M. GRAHAM
FOR: GENERAL MANAGER, OPERATIONS
- Manager, Labour Relations, Calgary
- Labour Relations Officer, Calgary

- Manager, Labour Relations, Calgary
- General Chairperson, Calgary
- Vice-General Chairperson, Calgary
- Local Chairperson, Lethbridge
- Vice-Local Chairperson, Lethbridge

AWARD OF THE ARBITRATOR

Trainperson M.L. Douglas claims that his spareboard miles guarantee was improperly reduced by the amount of miles paid in relation to a familiarization trip which he made on CN territory on April 3, 1999. His claim, however, is based on the provisions of article 16(f) of the collective agreement, read in conjunction with article 1.0 of the memorandum of agreement between the Company and the Council with respect to Trainperson's Road and Common Spareboard Guarantee, a document executed on January 10, 1998. The provisions in question are as follows:

> 16 (f) all miles paid for on regular working trips and combination deadhead ing/worki ng trips will be included in the calculation of Trainmen's miles. In addition, all miles paid for the following miscellaneous claims will also be included in such calculation: Deadheading Jury Duty Bereavement Leave Attending Court Special Service Late Cancellation of Assignment Held for Company Service Annual Vacation Cancelled after reporting for duty (when paid at least a minimum day) Attending Safety Committee Meeting (when paid lost earnings) Miles paid for while in Engineer's Training Program during mileage period in which he returns to the Trainmen's working list.
>
> 1.0 Trainpersons (West) regularly set up in freight service road and common spareboards who do not lay off of their own accord will be paid for not less than 1,615 miles at the required Brakeman's through freight rate in any regular pay period. Miles, for the purpose of this clause, shall be those outlined in article 16(f) of the collective agreement.

The narrow issue is whether the familiarization trip performed by Trainperson Douglas on April 3, 1999 can be said to involve miles falling within article 16(f) of the collective agreement.

The unrebutted evidence before the Arbitrator is that prior to Mr. Douglas' claim, the uniform past practice of the Company had been to treat familiarization trips as 16 regular working trips" within the meaning of article 16(f) of the collective agreement for the purposes of calculating spareboard guarantees. In the face of that practice the Council is able to point to no specific provision of the collective agreement which would suggest that familiarization trips are not to be so treated. Moreover, from a purposive point of view it is difficult to appreciate why such remunerated service should not be taken into account in the calculation of an individual's monthly guarantee.

It would appear to the Arbitrator that the Council's position tends to confuse the distinction

between an employee's allowable monthly mileage, a matter dealt with under article 16, and the separate concept of his or her monthly wage guarantee. The Council has presented nothing to persuade the Arbitrator that familiarization trips do not fall within the broader phrase "regular working trips" found in article 16(f) of the collective agreement, an interpretation confirmed by what appears to be a uniform past practice.

In the circumstances the Arbitrator does not find the case presented by the Council to be compelling, and concludes that the grievance must be dismissed.

November 20, 2000

MICHEL G. PICHER
ARBITRATOR