CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 220

Heard at Montreal, Tuesday, June 9th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

BROTHERHOOD OF RAILWAY , AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of mileage-rated driver M.J. Stratton, Vancouver, B. C., for three hours' pay at pro rata rate.

JOINT STATEMENT OF ISSUE:

On October 27, 1969, Mr. M.J. Stratton was required to report for an investigation in reference to an accident which occurred on October 25, 1969. The Brotherhood contends that Stratton is entitled to payment of three hours under Article 5.6 of the collective agreement. The Company contends that Article 5.6 has no application in this instance and payment declined.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. WELCH	(SGD.) C. C. BAKER
GENERAL CHAIRMAN	MANAGER INDUSTRIAL RELATIONS, CP TRANSPORT

There appeared on behalf of the Company:

C. C. Baker	– Manager Industrial Relations, Vancouver

And on behalf of the Brotherhood:

R. Welch	– General Chairman, Vancouver
M. Peloquin	– Administrative Assistant to International Vice-President, Montreal

AWARD OF THE ARBITRATOR

Article 5.6 of the collective agreement is as follows:

> **5.6** Employees notified or called to perform work not continuous with, before or after, the regular work period shall be allowed a minimum of three hours' pay for two hours' work or less. If held on duty in excess of two hours, overtime will be paid on the minute basis at the rate of time and one-half time the rate at which the employee is employed. Employees who have completed their regular tour of duty, have been released and are required to return for further service, may, if the conditions justify, be compensated as if on continuous duty.

Article 5 deals generally with overtime, and article 5.6, it is clear, deals with what is generally known as "call-in pay". Mileage-rated employees are specifically excluded from the provisions of article 5. The grievor was a mileage-rated driver, and he did not lose this classification by reason of being required to report for an investigation relating to a driving accident. For this reason, he is unable to succeed in any claim based on article 5.6.

In any event, even if the provisions of article 5 did apply to the grievor, it is my view that he was not called in to perform work within the meaning of article 5.6. An employee is entitled to a fair and impartial investigation, and may not be disciplined or dismissed otherwise. Article 17.1 indeed contemplates that employees may be held out of service within certain limits, pending investigation. In the instant case it seems the grievor was not held out of service; he was simply required to report for the investigation to which he was entitled. The collective agreement certainly makes no express provision for payment in such circumstances, although article 17 deals with the matter of the rights of employees subject to discipline, in some detail.

In my view, the payment sought is neither explicitly nor implicitly provided for by the collective agreement, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR