# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 819

Heard at Montreal, Tuesday, April 14, 1981

Concerning

## CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

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

## EX PARTE

### DISPUTE:

Claim that Messrs. Muers and Schell were dispatched from Kelowna to Winnipeg.

### EMPLOYEES' STATEMENT OF ISSUE:

Enroute at Calgary, mechanical trouble developed and the Company booked off Messrs. Muers and Schell.

The Union claimed for 12 hours' wait time – Article 30.6.

The Company declined the claim.

### FOR THE EMPLOYEES:

**(SGD.) R. WELCH**
**SYSTEM GENERAL CHAIRMAN**

There appeared on behalf of the Company:
N.W. Fosbery – Director of Labour Relations, Toronto

And on behalf of the Brotherhood:
R. Welch – System General Chairman, Vancouver
D. Herbatuk – Vice-General Chairman, Montreal

### AWARD OF THE ARBITRATOR

The grievors' home terminal is Calgary. On July 4, 1980, they were dispatched from Calgary to Kelowna, and they completed that trip. They were then dispatched from Kelowna to Winnipeg. They were not given a copy of the dispatch. The Company acknowledges that it was in error in this respect, and that a copy of the dispatch ought to have been given the grievors pursuant to Article 30.20 of the Collective Agreement. That matter is not important for this case, however, since it is agreed that the grievors were in fact dispatched from Kelowna to Winnipeg.

While the grievors were en route from Kelowna to Winnipeg, their tractor developed mechanical trouble. It was found that the delay required would be substantial, and so the grievors were booked off until the repairs were completed. The grievors now claim for the wait time, and base their claim on Article 30.06 of the Collective Agreement.

As it happens, the mechanical trouble occurred – or was repaired – at Calgary. That was, as has been noted, the grievors' home terminal. Both parties agree, however, that that is merely a coincidence. The claim made in this case would arise in similar circumstances at whatever point en route there might be a similar delay.

Article 30.06 of the Collective Agreement is as follows:

> **30.06** Wait time shall include waiting to be loaded, unloaded, meets or turn-arounds, equipment to be repaired and impassable roads to be cleared and shall be paid for on the actual minute basis.

While it is clear that "wait time" includes time spent waiting for equipment to be repaired, that provision must be understood in the context of the entire Article in which it appears and of the Collective Agreement as a whole. Article 30 sets out "special working conditions" for mileage-rated drivers. Articles 31 to 34 set out rates of pay for mileage-rated drivers. Article 35 sets out "special working conditions" for sleeper-cab mileage-rated drivers. The grievors are sleeper-cab mileage-rated drivers. While it would appear that the provisions of Article 30 apply to them in a general way, the provisions of Article 35 are of particular application.

Both Articles make provision for payment in cases of "terminal delay", "work time" and "wait time". "Terminal delay" is defined in Article 30.2, and the same definition is probably applicable where that expression is used in Article 35. "Work time" has a special meaning, and does not simply refer to time when the grievors might be "at work". It is clear from Article 30.5 that it refers to the performance of certain tasks other than the main task of driving the vehicle from its departure point to its destination. So too, "wait time" does not simply mean time spent "waiting", but refers rather to time waiting in certain defined situations, each of which relates, in my view, to the carrying-out of a particular assignment. That is, as I understand Article 30.6, the "wait time" referred to is time which an employee must spend waiting (and thus not earning his mileage rate) while he is on duty. Just as in the case of "terminal delay" or "work time", an employee would expect to be (and is) entitled to payment for such time on duty. Various provisions of Articles 30 and 35 deal with payment for such time, which is additional to the mileage payment.

In the instant case, the grievors were taken off duty. Until they were taken off duty (once they had brought the vehicle in for repairs at Calgary), they would be entitled to payment pursuant to Article 30.6. Once off duty, however, they were no longer "waiting" in the sense of Article 30.6. Rather, they were waiting to be called back to duty for the completion of their trip. They had been placed on layover. In some circumstances, employees are entitled to payment while on layover, where layover time exceeds a certain amount, and depending on the location involved. No question as to that has been raised in this case. The issue here is whether or not it was open to the Company to place employees on layover status where mechanical problems forced an interruption of their trip.

In the instant case, the answer to that question appears clearly in Article 35.7 of the Agreement, which is as follows:

> **35.7** No sleeper-cab driver shall be placed on layover if routed on any tour with outbound mileage under five hundred (500) miles.

Here, the grievors were routed on a tour where outbound mileage was in excess of five hundred miles. In prohibiting layovers in cases of trips with lesser outbound mileage, the Collective Agreement clearly implies that layovers may occur in cases of trips with outbound mileage of five hundred miles or more. This was such a trip, and it was not improper of the Company to lay the grievors over where a substantial delay in effecting repairs was involved. While the grievors were on layover, they were not on "wait time" within the meaning of Article 30.6, as they were not on duty. Whether or not they were entitled to any other payment is not an issue in this case.

For the foregoing reasons, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**
**ARBITRATOR**