CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1628

Heard at Montreal, Tuesday, March 10, 1987

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claims of Conductor W. K. Anderson and crew, Moose Jaw, for held away-from-home terminal time in the amount of 41 and 37 miles on January 15 and 21, 1986 respectively, when held in excess of 12 hours between tours of duty at other than home terminal.

JOINT STATEMENT OF ISSUE:

On January 14 and 21, 1986, Conductor Anderson and crew were called for unassigned work train service in accordance with the provisions of article 20, Clause (f) which states as follows:

> When an unassigned crew is used in work train service the crew will be paid work train rates and under work train conditions. If such crew is tied up at a terminal it will take its turn out in unassigned service.
>
> Work train service of six day duration or longer will be advertised and made a regular assignment.
>
> Should the crew be required to handle revenue freight cars other than those required to be moved in connection with the work service being performed, the first paragraph of this Clause will not apply. In such event the crew will be regarded as performing work train service en route and under through freight conditions.

On January 14, 1986, Conductor Anderson and crew were tied up in Rosetown at 1710. They resumed their work train service at 0830 on January 15, 1986. On January 21, 1986 Conductor Anderson and crew were tied up in Rosetown at 1700. They resumed their work train service at 0800 on January 22, 1986.

Claims were submitted for being held at other than home terminal in excess of 12 hours in accordance with the provisions of article 15, first paragraph, which states as follows:

> UNASSIGNED SERVICE
> Trainmen in pool freight and in unassigned service held at other than home terminal longer than 12 hours without being called for duty will be paid on the minute basis of 12 1/2 miles per hour at the rate of class of service last performed for all time held in excess of 12 hours except that in cases of wreck, snow blockade or washouts on the subdivision to which assigned trainmen held longer than 12 hours will be paid for the first 8 hours or portion thereof in each subsequent 24 hours thereafter. Time will be computed from the time pay ceases on the incoming trip until the time pay commences on the next outgoing trip.

The Union contends that clearly this pool crew was working in unassigned service and such service is specified as coming under the provisions of article 15, first paragraph. We ask that the claims as noted in the dispute be allowed.

Inasmuch as Conductor Anderson and crew were paid at least a minimum day for each day they were held in work train service as provided for in article 20 (a), the Company contends that they were properly paid and have no further entitlement to payment for time between their tours of duty in work train service.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. H. MCLEOD	**(SGD.) E. S. CAVANAUGH**
GENERAL CHAIRMAN	**GENERAL MANAGER, OPERATION AND MAINTENANCE**

There appeared on behalf of the Company:

D. A. Lypka	– Supervisor, Labour Relations, Prairie Region
B. P. Scott	– Labour Relations Officer, Montreal
G. W. McBurney	– Assistant Supervisor, Labour Relations, Prairie Region

And on behalf of the Union:

I. Robb	– Secretary, Thunder Bay
J. W. Shannon	– Vice-General Chairman, Calgary

AWARD OF THE ARBITRATOR

The union relies upon the provision of article 15 of the collective agreement. It is clear, however, that that is a general provision respecting unassigned service. The treatment of unassigned crews in work train service is more particularly addressed in article 20 of the agreement. Clause (f) of that provision provides:

> When an unassigned crew is used in work train service the crew will be paid work train rates and under work train conditions.

The basis of pay for work train service is described in article 20 (a) which provides, in part, as follows:

> Trainmen assigned to work train service and held in that service will be paid on the basis of 12-1/2 miles per hour at through rates computed from time crew is ordered for until laid up, and will be paid equivalent to not less than eight consecutive hours for every working day so held not including work lapping over from previous day.

In the case at hand the grievors were plainly an unassigned crew used exclusively in work train service within the meaning of article 20 (f). The terms of the collective agreement governing the payment of work train crews make no provision for additional payment other than for a basic day, save where more than a basic day is actually worked. It is not uncommon for work trains to be tied up en route after the completion of a work day, as was the instant crew at Rosetown. In that circumstance article 20 (a) of the collective agreement includes specific guarantee provisions to protect a crew that is laid up. It is not apparent to the Arbitrator why, in that circumstance, the crew should require the further protection of article 15.

The history of the application of article 20 lends support to the position advanced by the Company. Prior to 1962 an unassigned crew in work train service received through freight rates and worked under through freight conditions for the first two calendar days, after which it was subject to work train conditions. In other words, a distinction was then drawn expressly between work train conditions and other rates or conditions.

There is further evidence to support the Company's interpretation. The Union's own recognition that unassigned crews in work train service would be considered to be an assigned work train crew for the purposes of wages is reflected in a letter dated May 10, 1932 from the Western Lines General Chairman of the Brotherhood of Railway Trainmen, a predescessor to the instant Union. Referring to the predescessor provision to article 20, General Chairman Hendrick wrote at that time:

> Article 3, Clause F was placed in the schedule to give the Company the right to use an unassigned crew in work train service and the said crew were paid for the first two calendar days, they automatically became a work train crew as provided for in article 3, Clause A, of the Schedule ... An unassigned crew, is paid for the two calendar days, is a work train crew as provided for under the work train article.

It further appears that the interpretation advanced in this grievance by the Company was again accepted by the General Chairman of the Union in 1936. The 1936 minutes of the General Committee of Brotherhood of Railway Trainmen reflect a question being raised as to the payment to be made for an unassigned crew ordered for work train service and tied up for Sunday. The crew's claim for payment under the layaway-from-home rule was denied by the General Chairman who ruled:

> That the claim was not justified and could not be collected under the schedule, as ... the crew is an assigned work train crew; the Company had the right to tie them up at any point; the same as a crew who secured a work train under Bulletin.

The minutes note that the full General Committee of the Union concurred in the ruling.

While the provision for the payment of two calendar days at through freight rates has been removed, no other material change has been made to the provisions of article 20 (a). There is, in other words, no reason to interpret the rights of an unassigned crew in work train service laid up on route as being any different today than they were in 1936. On the basis of the history of the provision, the Arbitrator must accept the assertion of the Company that when unassigned crews become entitled to be governed by "work train conditions" they are entitled only to the daily guarantee provided for that work when tied up on route and cannot invoke the further benefit of the held-away-from-home-provisions of article 15 of the collective agreement. Any change in that entitlement is a matter for negotiation.

The Arbitrator therefore concludes that at all material times Conductor Anderson and crew were an unassigned crew in work train service governed by the provisions of article 20 of the collective agreement. As such they were covered by work train conditions and were subject to the specific provisions of article 20 (a) in respect of the period for which they were laid up at the end of the day's work on the date in question. As they were paid at least the equivalent of the guarantee of eight hours pay established for each day they were held in work train service, their wage entitlement is fully satisfied. Article 15 is not applicable in the circumstances, and the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR