CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2986

Heard in Montreal, Wednesday, 14 October 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Mr. M. Fuerst.

BROTHERHOOD'S STATEMENT OF ISSUE:

On August 2, 1996, the grievor was informed by the Company that he would no longer receive weekend travel assistance to and from his residence in Beausejour and his work location in Winnipeg. A grievance was filed.

The Union contends that: **1.)** The Company is in violation of section 20.5 and Appendix B-1 of Agreement No. 41. **2.)** The grievor has been unjustly dealt with in violation of Wage Agreement No. 41.

The Union requests that the grievor be compensated for all losses incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Freeborn	– Labour Relations Officer, Calgary
E. MacIsaac	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

D. W. Brown	– Senior Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
P. Davidson	– Counsel, Ottawa
K. Deptuk	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The issue in this grievance relates to the interpretation of article 20.5 and Appendix B-1 of the collective agreement. Article 20.5 reads as follows:

> **20.5** Opportunity and free transportation shall be given to employees for getting to their place of residence at weekends, when such leave will not interfere with the prosecution of the work.

Appendix B-1 includes a letter of understanding dated January 11, 1996 which reads, in part:

> **Qualification:**
> In order to qualify for weekend travel assistance, an employee must be required to work away from his home location on a regular basis (a minimum of five consecutive days prior to the start of the weekend). It is not the intention to provide weekend travel assistance to an employee holding a permanent position in one location who elects to live in another; however, there may be exceptional situations, such as lack of housing, etc., which may require that consideration be given to a weekend travel allowance in such situations. These situations must be authorized by the appropriate Company Officer in advance.

The facts are not in dispute. The grievor was laid off from work on the Lakehead Seniority Territory from March 4, 1993 until June 13, 1994. On June 13, by special arrangement between the Brotherhood and the Company, the grievor commenced work on the Brandon Seniority Territory, in Portage La Prairie. Thereafter he was given the opportunity to acquire a track maintainer's position in Grande Pointe, Manitoba. He travelled to both Grande Pointe and Portage La Prairie from his home in Beausejour, receiving a weekend allowance pursuant to the provisions reproduced above.

On May 29, 1995 the grievor successfully bid and was awarded a temporary track maintainer's job in Winnipeg. As before, he continued to travel to his home near Beausejour on weekends, and for that purpose was granted the weekend allowance until August 2, 1996. Thereafter the Company took the position that Mr. Fuerst was not entitled to the weekend travel allowance. The Company submits that the grievor was not forced to accept work in Winnipeg, that he had effectively exercised an option at his own discretion, and that in the circumstances he was not entitled to the weekend travel allowance.

The Brotherhood submits that the grievor was, by virtue of his residence in Beausejour, required to travel to the work which he held in Winnipeg. It stresses that he was then unable to hold any work on his home seniority territory, and was compelled to work in Winnipeg, as indeed he had done in Portage La Prairie and Grande Pointe. It submits that whatever may have been the applicable rule previously, the grievor's entitlement to the weekend allowance is categorically contemplated by the language of the letter of understanding of January 11, 1996, found in Appendix B-1 of the collective agreement.

The Company relies, in part, on a prior decision of this Office issued by Arbitrator Weatherill in **CROA 1006**. That case involved an application of article 20.5 of the collective agreement in the circumstance of employees resident in Quebec who were working in New Brunswick, and claimed the transportation allowance for weekend transportation between Saint John, New Brunswick and Lac Megantic, Quebec. In that case the grievance was dismissed, based largely on the reference to general practice contained within a letter of understanding between the parties dated March 3, 1970. The Arbitrator found that the practice was reflected in a letter issued by the Company in 1967 which provided that payment of the weekend travel allowance was to be made only in respect of employees filling temporary away-from-home vacancies as required by the Company, extra gang employees and B&B forces. It appears that pursuant to that letter section forces bidding assignments away from home were not to be reimbursed for transportation.

The issue becomes whether that arrangement, arbitrally confirmed in **CROA 1006**, has, as the Brotherhood contends, changed by reason of the negotiation of the letter of understanding of January 11, 1996. In considering that question I consider it noteworthy that much of the language of the letter of understanding of January 11, 1996 mirrors the language of the earlier letter of understanding of March 3, 1970 considered in **CROA 1006**. The following paragraphs in the letter of understanding of January 11, 1996 is noteworthy in that regard:

> This has reference to negotiations with respect to the adoption of a System Policy on weekend travel assistance for employees represented by the B.M.W.E. Union, for travelling home on weekends.
>
> During our discussions, the Company agreed to introduce a System Policy **based on the present Regional policies in effect covering this subject**. In so doing, the parties have concluded that, as in the past, weekend travel arrangements must be fair and practical and must not be permitted to interfere with the performance of work. These arrangements must also contain suitable restrictions on the frequency of trips and must not place an unreasonable economic burden on the Company.
>
> (emphasis added)

It may be noted that the letter of March 3, 1970 states "… practices presently in effect … will continue to be followed …". It further speaks to the parties striving to develop "… a fair and practical arrangement which would not interfere with the performance of the work nor place an unreasonable economic burden upon the railways and which would contain suitable restrictions on items such as the frequency of trips and maximum distances."

Can it fairly be concluded, given the close similarities between the two letters of understanding, that the "qualification" paragraph contained in the letter of understanding of January 11, 1996 was intended as an agreed reversal of the previous rule and practice, found by Arbitrator Weatherill, whereby section forces voluntarily bidding assignments away from home were not to be reimbursed for transportation? In considering that question the Arbitrator deems it important to bear in mind that the parties must be taken, at least to the date of the memorandum of understanding of January 11, 1996, to have accepted the interpretation of their collective agreement reflected in **CROA 1006**. The question then becomes whether the language of that letter of understanding has substantially changed the entitlement of section forces who work in circumstances similar to those of Mr. Fuerst. In the Arbitrator's view if the parties intended to make a radical change in the previous understanding, they should be taken to have done so only by evidence of clear and unequivocal language. Unfortunately, the language of Appendix B-1, as reflected in the letter of January 11, 1996, does not clearly give section forces employees who voluntarily bid assignments away from their home entitlement to the weekend travel allowance. The language of the letter specifically states that the agreement is to establish a system policy "… based on the present Regional policies in effect covering this subject." On that basis, the Arbitrator is satisfied that, as a general rule, a member of the section forces who voluntarily bids to work at a location remote from his home, that is to say in circumstances where he or she is not required to do so, is not entitled to the payments thereunder.

The question then becomes whether the grievor can be said to have been required to take work in Winnipeg, necessitating travel from his home in Beausejour, within the meaning of the "qualification" paragraph of the letter of understanding. The notion of being required can obviously have a number of meanings. It is not disputed that a section forces employee compelled by the Company to work temporarily at some distance from his home would fall within that category. It would also appear to the Arbitrator to be arguable that an employee who is compelled to work at a location other than his home, to the extent that his seniority can obtain him or her no other position, is under a degree of compulsion or requirement which would fall within the paragraph in question.

What then of the circumstances of Mr. Fuerst? Firstly, it is not disputed that the Company and Brotherhood were under no compulsion to provide him any work in the Brandon Seniority District or on the Winnipeg Division BST. The fact remains, however, that they did allow him to do so, and the grievor established a Trackman "A" seniority on the Winnipeg Division Seniority Territory on December 9, 1993. From a practical standpoint, he was required to work there, or within the Brandon Seniority District, if he wished to work at all. In either case, he was required to travel from his home at Beausejour to protect the only work he was then able to hold. I am satisfied that in that circumstance Mr. Fuerst can fairly be said to fall within the contemplated scope of the expression "an employee … required to work away from his home …" appearing in the letter of understanding of January 11, 1996. That conclusion would plainly not obtain if the grievor's seniority could have obtained him work on the Lakehead Seniority District at the times material to this grievance.

While the Arbitrator appreciates that this interpretation might discourage the Company, in the future, from making voluntary arrangements such as those which were made to accommodate Mr. Fuerst, it can only be assumed that the Brotherhood is aware of that possibility. In any event, I am compelled to apply the language of the new letter of understanding as I find it. In the circumstances I am satisfied that the grievor can fairly be said to have been required to travel from his home to hold work, whether on the Brandon seniority territory or at Winnipeg.

The grievance must therefore be allowed. The Arbitrator directs that the grievor be compensated for the weekend travel allowance as contemplated under article 20.5 and Appendix B-1 of the collective agreement. Should the parties be unable to agree on the quantum, the matter may be spoken to.

October 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR