CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3076

Heard in Montreal, Thursday, 16 September 1999

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of the Employees of Production Gang 3P41.

EX PARTE STATEMENT OF ISSUE:

On April 9, 1996, the grievors were notified that they were to be provided with motel accommodation (as provided for in article 22.1 of Agreement 10.1). At the same time, they were told that their starting time would not begin (and end) at the designated motel but would start and end at various locations on the Region as determined by the Company.

The Union contends that **(1.)** The starting and ending times of these employees should properly have been at the Company designated motel; **(2.)** The Company is in violation of articles 2.11 and 22.1 of Agreement 10.1 and has unjustly dealt with the employees involved in violation of article 18.6 of Agreement 10.1.

The Union requests that the grievors be made whole for any 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.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. A. Watson	– Consultant, Montreal
D. Laurendeau	– Labour Relations Associate, Montreal
P. Marquis	– Labour Relations Associate, Toronto
Scott Holmes	– Supervisor, Track Services
Caroline Gilbert	– Stagiaire

And on behalf of the Brotherhood:

R. A. Bowden	– System Federation General Chairman, Ottawa
J. Rioux	– Director of Research, Ottawa
D. W. Brown	– General Counsel, Ottawa
P. Davidson	– Counsel, Ottawa

AWARD OF THE ARBITRATOR

This grievance concerns the application of article 2.11 of the collective agreement. That provision relates to the starting time and finishing time of an employee's work day and provides as follows:

> **2.11** Employees' time will start and end at designated tool houses, outfit cars or shops. Where local conditions necessitate it temporarily, other designated assembly points may be established by mutual agreement between the appropriate representatives of the Brotherhood and the Company.

The facts giving rise to the grievance are not in dispute. In accordance with normal practice the Company established production gangs throughout Eastern Canada in the spring of 1996. Traditionally production gangs were housed in outfit cars, normally stationed near the work site, and their working day was timed from their departure from the outfit cars and their return to that location. In point of fact there was relatively difference between the geographic location of the outfit cars and the point at which the employees commenced their work. Occasionally employees were housed in hotels or motels, which were generally treated as a substitute assembly point for pay purposes.

In the spring of 1996, however, the Company made a change. It determined that crews, including the crew whose treatment gives rise to this grievance, which was assigned to perform work at Belleville, Trenton and Brantford, would be housed in motel accommodations. Although traditionally employees so housed were deemed to commence their shifts upon departure from the motel location, and to conclude their work upon return to the same place, by the wording of its job bulletin, the Company implemented a change in practice whereby the following was stated:

> Where no Atco provided start and stop times will be at designated job site.

The Brotherhood submits that the Company's unilateral designation of the commencement and ending point of the working day as being the job site, as opposed to any other location than the designated tool houses, outfit cars or shops contemplated within article 2.11, constitutes a violation of the collective agreement. The Brotherhood further stresses that there was no discussion or negotiation with the Brotherhood to seek mutual agreement for establishing any other designated assembly point.

The Company submits that it has not violated the collective agreement. In particular, it stresses that it has provided accommodations of a type contemplated by article 22.1 of the collective agreement, where specific allowance is made for meals and the payment of accommodations based on double occupancy or "reasonable expenses for meals and lodging" as provided therein. The Company also makes reference to **CROA 2571** where it was found that a welder foreman in the employ of Canadian Pacific Ltd. headquartered at Hamilton and working at Brampton, and housed at a motel, was not entitled to claim payment for hours spent detained at the motel. In that case the grievance was dismissed with the Arbitrator commenting, in part, as follows:

> In the Arbitrator's view the case put forward by the Brotherhood is not compelling. Firstly, the purpose of article 2.11 appears, on its face, to relate to giving clear definition to the start and end of employees' working days, for the purposes of timekeeping. It does not speak directly to the circumstance of employees who, like Mr. Mitchell, are regularly assigned to work away from their headquarters, and have for many years, without objection by the Brotherhood, been compensated in the way Mr. Mitchell was. It would appear well accepted, as evidenced by the long standing practice of the parties, that article 2.11 does not contemplate the circumstances in which the grievor was assigned. For that reason it cannot be invoked to sustain Mr. Mitchell's claim.

The Company also notes **CROA 1570**, a case involving these same parties, where the Brotherhood's claim for the payment of travel time for employees commuting to a work site from motel accommodation on a Company bus. In that case the Arbitrator found that there was no violation of article 11 of the collective agreement.

I turn to consider the merits of the dispute. In doing so, I cannot agree with the Company that the conclusions and principles discussed in either **CROA 1750** or **CROA 2571** are of great utility for the purposes of the dispute at hand. **CROA 1570** concerned a different issue, a claim for travel allowance under article 11, entitled "Travelling or Detained on Orders of the Company". That dispute did not concern the application or interpretation of article 2.11 of the collective agreement, as does the instant grievance. Similarly, in **CROA 2571**, although article 2.11 was pleaded and considered, the conclusion of the Arbitrator was that it simply had no application whatsoever to the circumstance of a welder whose general terms of employment have consistently involved itinerant service away from the welder's home headquarters. In that circumstance article 2.11 was found to have no application.

Needless to say, in any industrial environment a most critical feature of any collective agreement are those provisions which govern paid hours and days of work. Few provisions are more important to individual employees, as they necessarily define the employees' work opportunities and earnings, including entitlement to such premiums

as overtime, holiday pay and vacation pay. When the instant collective agreement is examined, there is virtually no other provision than article 2.11 which assists in identifying the commencement of the work day for employees who traditionally work in gangs, frequently at remote locations and on a season basis, performing scheduled track maintenance projects. Article 2.11, obviously negotiated in a time when outfit cars were the common form of accommodation, clearly mandates that the work time of employees is to start and end at their residential outfit cars. The only exception to that rule is where local conditions would justify other designated assembly points. In that circumstance, however, different starting and ending times for the work day of employees can be established only "by mutual agreement between the appropriate representatives of the Brotherhood and the Company".

Plainly, there was no mutual agreement with respect to identifying any alternative assembly point for the employees who are the subject of this grievance. Indeed, it would appear that the Brotherhood was never given notice of any change, save as appeared in the job bulletin.

The position of the Company would succeed, of course, if the intention of article 2.11 could be read as to apply only where outfit cars are utilized. If that were the wording of the provision, it would arguably be left to the discretion of management to determine the start and finish of an employee's day, absent any other provision in the collective agreement. That, however, is not the way the article is worded. And the history of its application suggests otherwise. It does not appear disputed that in some circumstances where modular buildings known as "nomad camps" are utilized, instead of outfit cars, the start and end of the working day is calculated from the nomad camps. It also appears that prior to this grievance, it was common for the Company, as indeed appears to be universal in Western Canada, to calculate the working day from the time of departure from hotel or motel accommodations, until return to the same point at the end of the day.

In the circumstances of the instant case, it is clear that the Company departed from the prior practice, and that it violated the express requirements of article 2.11 in that it failed to seek or reach agreement with the appropriate representative of the Brotherhood in establishing the work site as the designated assembly point for the purposes of the start and end of the employees' working day.

The grievance must therefore be allowed. The Arbitrator finds and declares that the motel accommodation which substituted for outfit cars must, absent any other agreement, be taken as the designated site for the purposes of the start and end of the working day. The Arbitrator further directs that the grievors be compensated for all lost time. The Arbitrator deems it unnecessary to make any comment upon the Brotherhood's claim that the employees were unjustly dealt with in violation of article 18.6 of the collective agreement, as that claim would, in any event, be inarbitrable (see **CROA 2939**).

December 17, 1999

(signed) MICHEL G. PICHER
ARBITRATOR