

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC RAIL

(hereinafter referred to as the "Railway")

AND:

CANADIAN UNION OF TRANSPORTATION EMPLOYEES, LOCAL #1

(hereinafter referred to as the "Union")

(Supplementary Award)

Dispute:

The application of the Award (Accommodations Arbitration) dated December 4, 2001, as it pertains to the payment of claims submitted by employees.

Joint Statement of Issue:

Certain claims for reimbursement of expenses have been made by employees as per the Accommodation Award dated December 4, 2001.

The Union contends that through past practice the Company has never required Engineers to submit receipts for mileage claims and that it is unreasonable to assume that the practice would be terminated without the Unions concurrence.

The Company contends that past practice cannot be relied upon as these circumstances have not arisen in the past.

FOR THE UNION:

Robert Samson
General Chairperson
C.U.T.E. Local 1

FOR THE RAILWAY:

D.A. Lypka
General Manager
Operations

Arbitrator:

H. Allan Hope, Q.C.

Counsel for the Railway:

Michael Keiran and Paul Straszak

Counsel for the Union:

Robert Samson and Wayne Benedict

Place of Hearing:

Vancouver, B.C.

Date of Hearing:

April 10, 2002

A W A R D**I - The Dispute**

As indicated in the Joint Statement, this dispute arises out of a prior award between the parties, (the Accommodations Award), with respect to when engineers who exercise their seniority away from their home terminals in order to avoid layoff can claim expenses. The issue arises with respect to what expenses fall within the entitlement of the employees and the extent to which they are required to provide receipts. Of particular concern to the Railway was when, if ever, "accommodation expenses" will include mileage claims.

The Accommodations Award should be read in conjunction with this Supplementary Award for clarity. The language at issue is Article 35.1. The answer to this dispute is that the entitlement of engineers to expenses contemplated in the Award was based upon the past practice of paying accommodation expenses. Hence, any claim for expenses must be addressed within the context of the practice. In particular, there is nothing in the Award that addresses whether accommodation expense would include as an alternative the payment of mileage for engineers who elect to commute to another location to avoid layoff. Further, there was nothing in the decision to support the conclusion that engineers who exercise their seniority in any circumstance other than to avoid a layoff are entitled to claim accommodation expense.

II - The Facts

Identified in the proceedings were 17 claims declined by the Railway in the period between December 8, 2001 and March 27, 2002. The claim of Mr. Arnott filed on December 8, 2001 was rejected on the basis that it was a mileage claim rather than a claim for expenses in the form of "the cost of fuel and meals from Williams Lake to Fort. St. John". A claim for rental accommodation was denied on the particular facts. The claim of Engineer Best dated January 7, 2002 was rejected on its particular facts and on the basis that it included a mileage claim which was not a legitimate expense. The Railway offered to compensate the Grievor for expenditures for gasoline.

The claim of Engineer Bouillon was rejected on March 26, 2002 on the basis that the move involved was an exercise of seniority as opposed to an exercise of seniority from the Grievor's home station made to avoid a layoff. The claim of Engineer Buckley dated January 24, 2002 was rejected on the same grounds. (An accommodation claim was paid ex gratia). The claims of Engineer Dempsey on January 20, 2002 and Engineer Gifford dated March 19, 2002 were rejected because they involved an exercise of seniority that did not meet the criteria. The claim of Engineer DesRoche was rejected on March 27, 2002, also on the basis that the claim was triggered by an exercise of seniority falling outside the criteria.

The claim of Engineer Gignac dated January 26, 2002 was rejected on the basis that it involved an exercise of seniority falling outside the criteria and on the basis that the particular

facts took it outside the scope of the Award, including the fact that it incorporated a mileage claim as opposed to the actual expenses incurred in operating a vehicle. In rejecting the claim the Railway wrote; "BC Rail does not view 'expenses incurred' as being equivalent to mileage claims, which are substantially higher". The claim of Engineer Green submitted March 16, 2002 was rejected because the move upon which the claim was based did not meet the criteria in the Award in that it was not a circumstance in which the claimant was "forced away from his Home Station" in order to avoid a layoff.

The claim of Engineer Hughes on January 10, 2002 was rejected on the basis that it was a mileage claim rather than a claim for expenses. The claim of Engineer Knuff made on March 21, 2002 was rejected for the same reason, and for the reason that it did not involve a move from the claimant's Home Station. The claim of Engineer Knuff dated January 7, 2002 was rejected on the basis that it did not fall within the criteria of the Award since it did not involve a circumstance in which the Grievor was "forced out of [his] Home Station to avoid layoff".

The claim of Engineer McMann made on December 19, 2001 was rejected because it was a mileage claim rather than a claim for expenses incurred. The claim of Engineer Morelli made on December 7, 2001 was rejected because it was a mileage claim rather than a claim for travel expenses and, with respect to a portion of the claim, because it involved a move which was not "forced" by the threat of layoff. The claim of Engineer Stevenson with respect to expenses incurred in prior years between 1991 and 1994 was rejected as, "untimely and irrelevant" and, in any event,

because the claim involved mileage rather than "expenses incurred".

The claim of Engineer Teigland on December 15, 2001 was rejected on the basis that, "the Railway is not responsible for expenses incurred by employees when voluntarily exercising their seniority within their Home Stations". Lastly, the claim of Engineer Zimmer dated January 3, 2002 was rejected because it was a claim for mileage rather than actual travel expenses.

III - Positions of the Parties

(i) - The Union

The submission of the Union was that all of the claims either fell within the existing practices and within the scope of the Accommodations Award. To paraphrase its written submission, the Union wrote that:

The past practice for the last 26 years is to submit [Form 100, R11/98], [or its predecessor] in order that an employee is compensated for use of a private vehicle in the service of the company and not to submit receipts for fuel.

Appended to the Union's submission was a copy of a standard expense claim form titled "Statement of Expenses" which it read as contemplating mileage claims. The Union's position was that the practice in claiming expenses generally should be seen as having application to engineers seeking compensation for accommodation "in circumstances where they are forced to exercise

their seniority away from their home terminal in order to avoid layoff". In its submission the Union made no distinction between claims for accommodation expense incurred in avoiding layoff and those incurred generally by employees who are travelling on the Railway's behalf and pursuant to its directions.

The Union's position, in effect, is that engineers required to leave their home station to avoid layoff are free to determine the manner in which they will exercise their seniority, including location, form of accommodation and a decision to commute as an alternative to obtaining accommodations. In particular, the Union submission contemplates a right in engineers to decide whether they will commute by personal vehicle and to claim mileage in the exercise of that election.

(ii) - The Railway

The position of the Railway was that the Accommodations Award did not contemplate claims in any circumstance other than where engineers were required to exercise their seniority away from their home station in order to avoid layoff. Its position was that any claims made on any other basis were not valid. In terms of the mileage issue, the Railway summarized its position as follows:

Our present disagreement is specific to those mileage claims that have not been honoured by the Company for lack of the requested supporting documentation. Those claims for other actual expenses that have been properly paid when supported by receipts are not in dispute. In the letters of declination in

respect to claims of \$0.38/km, employees have been invited to re-submit their claims in respect to actual expenses, however, to date, no such re-submissions have been received.

In short, the position of the Railway was that claims for mileage do not fall within accommodation expenses. In terms of past practice, the Railway submitted that "commuting expenses" have never been paid to engineers who exercise their seniority in order to avoid layoff in their home station. Its position was that:

It has been the consistent practice for employees to make their own way to and from the away from home location when exercising their seniority in the face of layoff, whether commuting daily or more intermittently, always entirely at their own expense. (An again now) the only obligation of the Company to these employees is to provide accommodation. If their claims for mileage are now paid as they have been submitted, they will have achieved a benefit through arbitration that they could not previously achieve at the negotiating table and they will have achieved a benefit that has never been applied in the past.

The Railway outlined its policy with respect to the implementation of the Accommodations Award. The approach is outlined in its written submission as follows:

Following the direction provided by the December 4, 2001 Award, the Company devised the following litmus test to screen and pay employee claims:

- 1) The employee must be facing layoff at his Home Station.
- 2) That employee must then have exercised his seniority to another location to continue working.
- 3) That employee must have been denied Company provided accommodations at the new location.
- 4) That employee must have incurred actual expenses as a result of not being provided with accommodation.
- 5) That employee must provide documentation attesting to the proof of expenses actually incurred.

In the context of that test and its application to employees who elect to commute in order to exercise their seniority away from their home station, the Railway acknowledged that it is willing to pay reasonable expenses supported by receipts. It did not acknowledge an obligation to pay mileage claims unless authorization had been obtained in advance.

IV - Decision

The Accommodations Award includes only sparse details of the practice upon which it was based. In the absence of details, it is noteworthy that the individual claims raised in this dispute were not shown by the Union to be in breach of the practice followed by the Railway with respect to providing accommodations to engineers who are seeking to avoid layoff. The Union asserted that a practice existed to support the claims, but did not distinguish between circumstances where expenses are paid by the Railway where the claim arises from the actions of the Railway and those claims made by engineers who exercise their seniority in order to maintain employment.

I note in particular in the context of practice that various of the claims arising in this dispute relate to exercises of seniority which were not required in order to maintain employment. There is no support for those claims in the Accommodations Award. It is limited to circumstances in which the exercise of seniority away from the home station arises as an alternative to layoff. My further conclusion is that the parties were at odds with respect to what practice was involved. The Union referred to the practice of the Railway where mileage is claimed in response to circumstances in which the Railway has authorized use of a private vehicle. There was no practice to indicate that employees were recognized as having a right to claim mileage in other circumstances.

Some sense of the practice with respect to accommodations is found in the exchanges on p. 13 of the Accommodations Award. Those exchanges imply a practice in which engineers facing layoff in their home zone would select a location where their seniority would permit them to hold an assignment and the Railway "would arrange the accommodations". There is no basis in the award for concluding that engineers who are not required to exercise their seniority away from their home station in order to avoid layoff would have a claim, nor was there any indication that engineers who did exercise their seniority within the criteria were recognized as having a discretionary right to commute and charge the Railway mileage. The practice referred to by the Union with respect to mileage, as indicated, related to circumstances in which the Railway authorized engineers to use their own vehicles for the Railway's purposes.

I conclude on the basis of the facts presented that the Union did not bring any of the Grievors within the terms of the Award. In each case, the question is one of its application to particular facts. That is, any claim advanced for compensation for accommodation entitlement or expense must be brought within the terms of the practice that gave rise to the Award which is itself circumscribed by the language of the collective agreement relating to accommodations. Claims under the Award are confined to those made by engineers who are exercising their seniority in order to avoid layoff in their home station and must relate to accommodation expense that has either been approved or consists of reasonable expenses that arise in circumstances where the Railway has been unable to supply accommodation.

The criteria proposed by the Railway with respect to the assessment of an expense claim relating to accommodation cannot be seen as contractually binding, but it does provide a useful guide in terms of filing a claim. In particular, it provides a guide for the filing of a claim for expenses. The Union interpretation would recognize a right in engineers to make decisions binding upon the Railway with respect to where they will exercise their seniority and how their choice will be accommodated, both as to the form the accommodation takes, whether it involves commuting on mileage rates and what costs will be incurred at the Railway's expense.

The Union's interpretation is not one that the language of the collective agreement (as interpreted in the Accommodations Award), will sustain. It is in that context that the Railway's criteria is to be preferred. Claims advanced outside the

Railway's guidelines must pass the test of reasonableness as reflected in the practice of the parties in dealing with expenses paid voluntarily by the Railway in years past to engineers who were forced to leave their home station to protect their employment. In the result, the grievances are dismissed.

DATED at the City of Prince George, in the Province of British Columbia, this 27th day of August, 2002.

"H. Allan Hope, Q.C."

H. ALLAN HOPE, Q.C. - Arbitrator