

## Grievance Arbitration

### Accommodation Award Revisited

#### CUTE 1 Submission

- 1) The original arbitration on this matter dated Dec 4<sup>th</sup> 2001 found.
- 2) **“Engineers are entitled to accommodation under Article 35.1(2) in circumstances where they are forced to exercise their seniority away from their home terminal in order to avoid layoff. Engineers who have been denied accommodation in those circumstances are entitled to be compensated for expenses they have incurred. I will retain jurisdiction to assist the parties in applying this award if that becomes necessary.” (emphasis added)**
- 3) When we review the reasons for denial of said expenses, we see that BC Rail has relied predominately on two reasons.
  - a) “ The railway is prepared to compensate you the cost of fuel and meals.”
  - b) “Your moves were an exercise of your seniority”
- 4) With respect to this first reason for denial, It has long been the practice here at BC Rail for Employees (either scheduled or non-scheduled) to submit a completed expense form 100(R11/98) (see appendix 1) when claiming legitimate expenses. An established mileage rate is used to reflect the overall expense of operating a motor vehicle in the service of the company, not gasoline or other receipts as the company contends in this case.
- 5) When the back of form 100(R11/98) is viewed, it clearly shows that there is a separate provision for mileage. It is CUTE 1 ‘s contention that the past practice for the last 26 years is to submit this form (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.

- 6) In the original Arbitration upon which arbitrator Hope remains seized, he stated with reference to past practice...

**“Turning then to the evidence of past practice, it supports the interpretation of the Union in that the facts reveal a consistent practice relating to engineers who were required to exercise their seniority away from their home station in order to avoid layoff. The significance of the practice is to be weighed in the context of the following comments on p. 102 of District of Burnaby:**

**If the board is going to draw inferences, in our view it should have the background and the basis on which the parties were in fact operating. All this means is that we should have a complete understanding of the way in which the parties carried out their bargain if we are to “have regard to the substance of the matters in dispute”. (emphasis added by Hope)”**

- 7) This accepted mileage claim represents the industrial standard for this type of service and is reflective of ‘their bargain’ referred to in the District of Burnaby”.

- 8) In Brown and Beatty section 3:4430 the issue of past practice is addressed as “

**Where arbitrators have accepted a past practice as being reliable, it is usual that it will have been practiced over a number of years had existed through several negotiations.”**

- 9) The use of the mileage claim as opposed to fuel is and has been in recognition of the overall legitimate cost involved with the use of a motor vehicle. These costs reflect the real value of fuel, insurance, depreciation and wear and tear in the form of ongoing repairs. The practice of employees submitting form 100s for reimbursement of vehicular expenses continues to this date, the only anomaly being the company’s insistence on receipts in the application of Mr. Hope’s accommodation award.

- 10) With respect to the second reason for denial of expense claims, (“Your moves were an exercise of your seniority”); Again, from Mr. Hope’s original award:

**“Engineers are entitled to accommodation under Article 35.1(2) in circumstances where they are forced to exercise their seniority away from their home terminal in order to avoid layoff. Engineers who have been denied accommodation in those circumstances are entitled to be compensated**

**for expenses they have incurred. I will retain jurisdiction to assist the parties in applying this award if that becomes necessary.” (Emphasis added).**

11) It goes without saying that the denial of expense claims based upon “exercise of seniority” flies in the face of the original accommodation award.

12) In closing and to capsulate:

- a) There is a long history of respecting expense claims being paid without receipts that cannot be unilaterally stopped by one party outside of the bargaining process.
- b) The exercising of seniority “in order to avoid layoff” is a legitimate reason for submitting such claims.
- c) The mileage rate claimed is a legitimate expense as per arbitrator Hope’s accommodation award.

The union respectfully submits the forgoing for your decision.