CANADIAN RAILWAY 0FFICE OF ARIITRATI0N

CASE NO. 7

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (EASTERN REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim by the trainmen for payment on the basis of two separate trips between Trenton and Toronto when required to back into Trenton Yard due to locomotive failure.

J0INT STATEMENT 0F ISSUE:

On May 16th, 1964, Conductor J. 0. Hagerman and crew, consisting of Trainmen L. D. Valade and J. W. Laing, were ordered at Trenton, Ont. for 2:15 P.M. for movement to Toronto Yard with diesel units 8785-8021- 4082, 118 cars, 6454 tons, 'A' rating 9100 tons. Train left outer main track switch at 4.05 P.M. and stopped with the caboose at about Mileage 104.0 Belleville Subdivision. The outer main track switch is at Mileage 103. Diesel unit 4082 failed, causing train to stall. Train was backed into Trenton Yard where unit 4082 replaced by unit 8741 and train then proceeded to Toronto Yard, leaving outer main track switch at 5:35 P.M.

After train had backed into Trenton Yard, Conductor Hagerman booked "In" in the train register indicating "off duty" at 4:55 P.M. and "on duty" at the same time, i.e. 4:55 P.M.

In each instance Conductor Hagerman submitted one wages claim covering initial terminal time at Trenton, plus a minimum day from time on duty until train backed into the yard and an additional claim for initial time and miles Trenton to Toronto Yard. The claims were declined.

The Brotherhood of Railroad Trainmen alleges that the Company violated Article 14, Clause (b) of the Collective Agreement when it required Conductor Hagerman to take his train through from Trenton to Toronto Yard on the basis of a continuous trip.

FOR THE EMPLOYEES:

(Sgd.) J. I. HARRIS
General Chairman

FOR THE COMPANY

(Sgd.)W.J. PRESLEY
General Manager
(Eastern Region)

AWARD OF THE ARBITRATOR

The following are reasons for judgment delivered on July 10, 1965, by Mr. J A. Hanrahan, Arbitrator, following a hearing held before him in Montreal, Quebec, on July 7th, 1965, under the authority conferred by the terms of an agreement between the parties dated January 7th, 1965:

As indicated in the statement of dispute the train in question had proceeded approximately one mile past the outer main track switch at Trenton, Ontario, the point of departure, when because of engine trouble it had to back into the Trenton Yard. There the engine was replaced and the train proceeded to its original terminal point, Toronto Yard.

Conductor Hagerman booked "In" on the train register when the train backed into Trenton Yard, which indicated hc was "off duty". At the same time he registered "On duty" to proceed outward.

It was contended by Mr. Harris that the backup movement into the Trenton Yard constituted turn-around service.

It was explained that "straight-away" service is the term used to define a trip from thc initial terminal to the distant or objective terminal with the crew being released from duty at the latter point. "Turn-around service" was said to be the term generally applied to define a trip from the initial terminal to the distant or objective terminal or to a station intermediate to these terminals with a return to the initial terminal as a oontinuous trip.

The refusal of the Company to pay this claim was in Breach of Article 14 (b), Mr. Harris claimed. It reads, in its first paragraph:

> "Trainmen will be notified when called whether for straight away or turnaround service and will be compensated accordingly. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call; such as accident, locomotive failure, washout, snow blockage or where the line is blocked."

In support of his reasoning Mr. Harris quoted Article 11, Clause (b):

> "Runs of one hundred miles or less, either straight away or turnaround shall, except as otherwise provided in Article 14 be paid as 100 miles."
>
> Also Article 11 (kl-2)
>
> "Road miles will be the distance from the outer main

track switch or designated point at initial terminal to the outer main track switch or designated point at final terminal. Road time will commence when payment for initial terminal time stops and will end when payment for final terminal time begins."

Finally, Clause K-2:

"In all road service, except passenger service, one hundred miles or less, eight hours or less (straight away or turnaround) shall constitute a day's work. Miles in excess of 100 will be paid for at the mileage provided."

From these provisions Mr. Harris reasoned the words "or less" applied whether, as in this case, it was only one mile or whether it was fifty miles. There was no qualification to its general application, he claimed.

Mr. McCurry argued that the Company had exercised its pre- rogative as contained in Article 14 (b) to call this crew on a straight- away basis and that this call was never changed. He contended there is nothing in the agreement to support the reasoning that because the train stopped temporarily just outside the outer main track switch at Trenton and backed into the Yard for emergent reasons this should be construed as automatically changing the nature of the trip from straight-away to turn-around.

Mr. McCurry claimed that carrying the Brotherhood's reasoning to its ultimate would mean the moment the engine of a train passed the outer main track switch the train could not then back into the yard to set off a car which may have been discovered defective nor for any other emergent reason without relieving the crew from duty and paying them for another full day's work even though the caboose along with the Conductor and the rear trainman may still be well inside the yard.

Mr. McCurry contended payment was properly made in this instance under the provisions of Article 11, Clause (k):

"In a11 road service, except passenger service, one hundred miles or less, eight hours or less, (straight away or turnaround) shall constitute a day's work. Miles in excess of one hundred will be paid for at the mileage rates provided."

Let us examine the second paragraph of Article 14 (b), to ascertain what the parties considered as justifying the description "turnaround service". It provides:

"When the distance between the initial terminal and the objective terminal is less than 100 miles, the objective terminal may be regarded as a turnaround point and trainmen in unassigned service, when called for turnaround service, run in and out of each point on a continuous time basis. When the turnaround point is an intermediate station, trainmen may be called for

> turnaround service without regard to the distance between such station and the initial terminal."

The term "objective terminal" should be underlined in this consideration.

Again in the fourth paragraph:

> "A crew in unassigned service may be called to make more than one short trip and turnaround out of the same terminal and paid actual miles, with a minimum of 100 miles for a day, provided (2) that the road miles from tho terminal to the turning point do not exceed 30 miles..."

A study of the first paragraph of Article 14 (b) convinces the Arbitrator the language used is too general in scope to be held as specifically covering the situation under consideration. It is clearly the Company's prerogative to first declare whether the call is for straightaway or turnaround service. Of governing importance in an analysis of this provision and its applicability to the situation being considered are the words that follow "Such notification will not be changed.." This prompts the question "Changed by whom?" The only reasonable inter- pretation would be by the authority origina11y describing the scrvice. Then consider the lack of specifics as to the extent or nature of "circumstances required" before that authority might exercise the right to make such a change. Certain examples of possible circumstances are given, including "locomotive failure". The difficulty is in the language used. One of these suggested happenings does not automatically result in the type of service originally described being changed. "Such notification will not be changed" - implying, as stated a decision to change, not an automatic happening, and then only "when necessitated by circumstances which could not be foreseen."

Both sides admitted this was not the most suitable test for the section in question In the opinion of the Arbitrator the first paragraph of this Article would require considerable rewording to indicate that an engine failure resulting in any backward movement, no matter how short a distance, in a run originally called as straight-away would automatically change such a trip to turnaround, particularly when, as in this case, after a short delay the trip continued to the original terminal. This intention, in my opinion, is not indicated by the language used.

For these reasons this claim must be disallowed.

J.A.HANRAHAN
ARBITRATOR