CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO 9

Heard at Montreal, Wednesday, July 7th, 1965

Concerning

CANADIAN PRACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the use of payments made in respect of work train service enroute to make up a minimum day.

JOINT STATEMENT OF ISSUE:

Work performed by train crews under the provision of Article 20, Clause (i) of the collective agreement with the Brotherhood of Railroad Trainmen, is being used by the Company to make up a minimum day.

The Brotherhood contends that the provision of Article 20, Clause (i) in the collective agreement is being violated, inasmuch as this constitutes a special allowance to trainmen when held for work train service enroute in excess of one hour, and that time so made cannot be used to make up a minimum day.

FOR THE EMPL0YEES:

(Sgd.) J. I.Harris
General Chairman

F0R THE COMPANY:

(Sgd.) A. M. Hand
General Manager

AWARD OF THE ARBITRATOR

The following are reasons for judgment delivered on July lOth, 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:

This problem concerns the Company's action in using the time of trainmen held for work train service enroute to make up a minimum day.

Mr. Harris argued this violated the provisions of Article

20, Clause (i) of the collective agreement, that reads:

> "Trainmen will be paid for work or wreck train service en route when time occupied exceeds one hour, and time so paid for will not be included in computing overtime."

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It was the claim of the Brotherhood that time so occupied had resulted in a negotiated premium that should be paid over and above the basic day's wages. The time aspect being basic to the roadmen's system of pay, the Brotherhood had worked to provide against extra work enroute interfering with getting over the road as quickly as possible. If such an interruption occurred, it should be compensated ior on the basis of an earned additional benefit, Mr. Harris reasoned.

Mr. Harris pointed to the exception contained in this provision preventing it being utilized in computing overtime. This he reasoned strengthened his view that it was intended to be an arbitrary or special allowance.

Mr. Firmin's basic argument was that there is nothing in the collective agreement supporting the Brotherhood's theory that such payments cannot be used to make up a minimum day when required.

Mr. Firmin offered examples of how the Company viewed the proper application of the existing provisions to govern compensation in such circumstances:

(1) A crew runs 75 miles, performs 1'00" work train service enroute: Payment:

Actual miles run	75 miles
Work train service enroute 1'00" to make up minimum day	12.5 miles
Balance of miles to make up minimum day	l2.5 miles
Total pay	100 miles

(2) A crew runs 100 miles, performs 1'00" work

train service enroute:	payment:
Actual miles run	100 miles
Work train service enroute l'00" (added a/c in excess of minimum day)	12.5 miles
Total pay	112.5 miles

Mr. Firmin referred the Arbitrator to a decision of His Honour, Judge Lippo, in a matter concerning the Brotherhood of Locomotive Firemen and Enginemen on the Prairie and Pacific Regions, under date of November 30, 1964. While Mr. Firmin stated that with the exception of the inclusion of the words "or wreck train" in Article 20, Clause (i) of the Trainmen's agreement, the two rules are identical. Mr. Harris argued the whole wage structure of the Pacific DivisIon for firemen and enginemen differed so completely from that of the Trainmen in the Eastern Division that this judgment would be valueless.

In the matter before Judge Lippe the crew involved while enroute was required to work 2 hours and 15 minutes in unloading steel. When a claim was submitted for 100 miles, plus 28 miles, which meant 61 road miles actually run and 39 not run, the claim was reduced to 100 miles minimum basio pay, plus 9 miles for initial terminal time. It was the company's contention that use of the 28

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miles in work train service enroute to make up a short day is consistent with the provision quoted. The same contention was there made by the Brotherhood, namely, that the provision constituted a special allowance when required for work train service enroute in excess of one hour and that time could not be used to make up a minimum day.

Confining his findings to an interpretation of the section quoted, without reference to any other benefit accruing to those in the Pacific Division, His Honour stated:

> "The undersigned has been particularly impressed by the argument submitted by thc Company that each employee should get a full day's pay for a full day's work. This is a generally admitted principle. In the present case, the

> Union's interpretation would mean that an employee would receive more than a full day's pay when, in fact, he had worked less than a full day's work. This interpretation is illogical".

That claim was dissallowed.

In the view of this Arbitrator, it would require words not appearing in Article 20, Clause (i) to sustain this claim. To give effect to the Brotherhood's reasoning the Clause would have to contain a qualifying provision such as "Time so paid shall not be used to make up a minimum day". That intention does not appear even by inference.

There is an existing benefit in the language used, as indicated by the example given by Mr. Firmin, namely, that in the event the actual miles run amount to 100, there can be added any time used in work train service enroute. In its present form that is the extent of the benefit negotiated in Article 20, Clause (i).

For these reasons this claim is disallowed.

J. A. HANRAHAN
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