

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 18

Heard at Montreal, Monday, November 15th, 1965

Concerning

CANADIAN NATIONAL RAILWAY COMPANY (ST. LAWRENCE REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Conductor L. W. Stoodley and crew (Toronto) for difference in pay between freight rates claimed and passenger rates paid for service performed on trains 18-19 between Toronto and Montreal June 2 and 3, 1964.

JOINT STATEMENT OF ISSUE:

Conductor L. W. Stoodley and crew (brakemen F. K. Davey and J. Monick and baggageman F. G. Ellis) handled train No. 18 Toronto to Montreal June 2, 1964 and train No. 19 Montreal to Toronto June 3, 1964. Both trains handled passengers between Toronto and Dorval. On June 2 and 3, 1964 Conductor Stoodley and crew claimed freight rates for handling trains 18-19 and were paid at passenger rates. These employees subsequently submitted claims for the difference between the freight rates claimed and the passenger rates paid on the grounds that in refusing payment at freight rates the Company had violated Article 16 of the agreement.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) G. W. McDEVITT  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. A. JOHNSTONE  
ASST. VICE-PRESIDENT  
LABOUR RELATIONS

There appeared on behalf of the Company:

K. L. Crump	Asst. Manager Labour Relations, C.N.R., Montreal
R. St. Pierre	Labour Relations Assistant, C.N.R., Montreal
A. D. Andrew	Senior Agreements Analyst, C.N.R., Montreal
J. Mansfield	Labour Relations Officer, C.N.R., Montreal
R. J. Wilson	Senior Agreements Analyst, C.N.R., Montreal
A. J. Del Torto	Labour Relations Officer, C.N.R., Montreal

And on behalf of the Brotherhood:

G. W. McDevitt

General Chairman, B. R. T. Toronto

AWARD OF THE ARBITRATOR

This claim, Mr. McDevitt explained, concerns the applicability of Article 16, headed "Combination Service", reading:

"Trainman performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to and class of service performed. The overtime basis for the rate paid will apply for the entire trip."

The members of the crew in question were assigned on trains No. 18 and 19 operating between Toronto passenger depot and Montreal Bonaventure express-freight yard and return.

Mr. McDevitt explained that in 1962 this railway commenced to implement long term plans for the integration of less than carload freight and express services into an express-freight merchandise service. This involved an effort to operate a new kind of service which was expected to attract large volume business, both passengers and express freight. To this end a new freight-express terminus was built in Montreal at Bonaventure yards. The type of trains operated for the purpose were then operated to and from that yard location instead of continuing to operate to or from the Montreal passenger station.

In the fall of 1963, Mr. McDevitt described train No. 18 ex Toronto no longer operated to the Montreal passenger station but was diverted, in the Montreal area to Bonaventure Yard via yard tracks and Bonaventure spur. Train No. 19 operated from that yard location with this change, the public was advised in the public folders that there was "no passenger service east of Dorval, Quebec, on Train No. 18" and "no passenger service east of Dorval, Quebec, on Train No. 19." These trains did, however, continue to operate east of Dorval for the exclusive purpose of handling express-freight and/or mail.

Mr. McDevitt also dealt with management's reply in declining payment of the higher freight rates claimed by the crew. Reference was made to the Note under Article 15, page 21 of the current B.R.T. Schedule. It was claimed by management that these trains are passenger trains for all intents and purposes; that movement of the equipment from Dorval to Bonaventure is incidental to the main purpose of the train.

Mr. McDevitt claimed the note referred to was applicable to mixed train service, namely, trains containing both freight and passengers. Payment for such service on such trains is that provided in Article 8 (a) of the current schedule:

"Freight trains which only incidentally contain a car devoted to passenger train transportation service shall be classed as freight trains, and passenger trains which only incidentally contain cars moved in connection with freight transportation shall be classed as passenger trains."

With reference to the company's claim that the last paragraph of Article 1 was of determining importance, Mr. McDevitt stated the operation of these trains between Bonaventure Yard, Montreal and Dorval is not that of handling a train of deadhead equipment. The majority of cars on the train are loaded cars, loaded with express-freight and/or mail, and it is for the purpose of moving these cars to or from the Bonaventure Yard that this train is operated between Dorval and Bonaventure Yard.

The last paragraph of Article 1 referred to reads:

"Passenger rates of pay and conditions will apply in handling deadhead passenger equipment when passengers are handled during the course of the trip or day's work paid on a continuous time basis."

For the Company Mr. St. Pierre explained that with the advent of the use of the Bonaventure facilities rather than the Central Station, subsequent to September 7, 1963, because there were no passenger handling facilities at the former, the company's public passenger folders were revised, specifying that trains 18 and 19 would not handle passengers east of Dorval. The passenger coach, although not used to transport passengers between Dorval and Bonaventure Yard, remained in the train consist and thus was "deadhead passenger equipment" for that portion of the trip. The distance involved is approximately 9.5 miles.

Mr. St. Pierre explained the crews manning trains 18 and 19 took no exception to the continuance of their pay at passenger rates following the cessation of the carriage of passengers east of Dorval on September 7, 1963. It was not until about a year later this claim was received.

Mr. St. Pierre claimed Article 16 had no application to the type of service performed by this crew; that in order to bring that provision into effect it would be necessary to establish they had performed more than one class of road service in a day or trip. It was claimed Article 16 is concerned with trainmen who perform different classes of road service during the same trip such as a train crew handling a passenger train who during the course of the trip regularly add freight equipment to their consist and thereby convert their train to freight service or who commence a trip in passenger service but later set out all passenger equipment and proceed to their destination with a train of freight equipment.

Mr. St. Pierre cited four examples of actual runs where passenger trains are operated between two locations and where no passengers are handled during a portion of a trip or day's work. This practice had never before brought forth a claim such as this.

St. Pierre claimed the forerunner of the last paragraph of Article 1 was contained in a memorandum of understanding signed at Toronto between the Company and the Order of Railroad Conductors and the Brotherhood in June, 1930. It provides:

"It was agreed that freight rates and rules will apply where

passengers are not handled during the same trip or day's work paid on a continuous time basis, and that passenger rates and rules will apply where passengers are handled in any portion of day's trip or work paid on a continuous time basis."

There was no dispute that the members of this crew were paid on a continuous time basis.

A study of the applicable provisions convinces that the last paragraph of Article 1 was designed to deal with a situation exactly similar to that under review. There is no disputing the fact that these trains advertise and offer transportation of passengers from Toronto to Dorval and return. That makes them passenger trains. In the eastbound trip, because no passengers are carried past Dorval, the empty passenger coach can be described as being handled as deadhead equipment. Article 1 clearly contemplates the handling of express and mail. No limitation is placed upon the quantity of the number of cars necessary for such handling. The Article sets forth the rate of pay for baggagemen handling both express and mail. The last paragraph then provides:

"Passenger rates of pay and conditions will apply in handling deadhead passenger equipment when passengers are handled during the course of the trip or day's work paid on a continuous time basis."

That provision covers the three important items for a determination of this problem: (1) Passengers are handled during the course of each of these trips; (2) the crew are paid on a continuous time basis and (c) the passenger car is handled deadhead between Dorval and Bonaventure Yard, a distance of 9.5 miles, as well as on the return trip.

This finding requires this claim to be denied.

J. A. HANRAHAN  
ARBITRATOR