

CANADIAN RAILWAY OFFICE ARBITRATION

CASE NO. 44

Heard at Montreal, Monday, July 11th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Request of Brotherhood that engineers Burns and Hyland be compensated on the basis of an additional minimum day's pay of 100 miles each for switching performed other than in connection with their train, at Rigaud, on March 7th, 14th and April 4th, 1965, pursuant to Article 2 (c) 3 of the collective agreement.

JOINT STATEMENT OF ISSUE:

On the dates mentioned, the engineer on train No. 255, which left Montreal at 9:45 p.m., was required to make certain switching moves after arrival of his train at Rigaud, at 11:05 p.m. This involved switching of equipment which had arrived at Rigaud on train 251 at 8:00 p.m., to be used on trains Nos. 244 and 250 from Rigaud the following morning. The Brotherhood disputes the action of the Company in having the engineer on train No. 255 do the switching of this equipment at Rigaud as work not belonging to their train and requests payment of an additional day's pay. This has been declined by the Company as being unwarranted and inconsistent with the provisions of Article 2 (c) 3 of the collective agreement.

FOR THE EMPLOYEES:

(Sgd) E. C. MACHIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd) A. M. Hand
GENERAL MANAGER - ATLANTIC
REGION

There appeared on behalf of the Company:

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| F. G. Firmin | Asst. to Vice-President, Atlantic Region, C.P.R., Montreal |
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And on behalf of the Brotherhood:

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| E. C. Machin | General Chairman, B. L. E., Montreal |
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AWARD OF THE ARBITRATOR

As indicated in the Joint Statement of Issue these claims are for Engineers required to do switching at Rigaud which had no connection with any train in their assignment.

The representative of the Brotherhood claimed the employees concerned were on regularly established passenger runs such as are contemplated in Article (c) of the collective agreement, reading:

"Regularly established passenger runs less than 100 miles one way shall be considered as continuous runs, from time ordered for, until laid up at the end of the day and shall be paid at the rate of 12 1/2 miles per hour and overtime pro rata, with a minimum of 100 miles per day exclusive of initial terminal time first trip; but if the miles run, or the miles run and the service performed and switching, together with all time held at terminal and turn-around points between trips where engines are not turned over to enginehouse staff, combined at the end of the day, exceed 12 1/2 miles per hour, then the mileage will be paid; Company to say when and where the day's work starts. Starting point of runs now established not to be changed unless warranted by change of time."

The "note" to this provision is of importance:

"While it is not the intention of the rule that greater compensation should be paid than is required under the conditions mentioned for either total elapsed time, or mileage made, arbitraries, and for time held and service performed at terminals or turn-around points with a minimum of one hour at the turn-around point, as stated in sub-paragraph (i), the time allowance at turn-around points cannot be held at any stated minimum as the rule clearly indicates that an engineer is entitled to have figured in his compensation the total time required to be on duty.....Therefore if at a turn-around point the station is located some distance from the roundhouse, and particularly at an engine maintaining point, the engineer is held at the station some time until the train is switched and then the time occupied in getting to the engine house.....the engineer is properly entitled under the rule to a time allowance for the full time required whether or not such time exceeds a total of one hour."

For the Brotherhood emphasis was placed upon the words until the train is switched ...", claiming that if general station switching was contemplated the wording of this Note would so indicate.

While the Company pointed to the fact that these employees were on continuous time, this was refuted by the statement on Engineer Burns, his claim for March 7th, was based on time and miles. Engineer Hyland's wage claim for March 14th was originally submitted for time and miles but on the suggestion of the timekeeper it was changed to continuous time. This also occurred with reference to his ticket for April 4th.

Attention was also called to the fact that the speed basis for payment in this type of passenger service is twelve and one-half miles per hour; in other passenger service it is twenty miles per hour. The difference in basis, according to the Company, is because periods of release are included during the tour of duty in this service.

Because the Brotherhood had been forced to accept this argument as justification for the difference, it was urged that permitting the Company to fill up these periods of release by using those assigned engineers to perform other service would be destroying the basis for the reduced rate of mileage.

The representative for the Company told that equipment of suburban trains arriving at Rigaud is tied up for periods of time awaiting return movements to Montreal. Because of the requirements of the service, there is from time to time a certain amount of equipment that has to be switched between trains. This is done on arrival of the trains at Rigaud so that everything will be in readiness for the return movements and the crews put off duty with a minimum of delay.

The crux of the argument advanced by the Company for rejection of these claims is that the word "switching" used in Article 2 (c) 3 is unqualified. This applies equally to the provision of sub-paragraph (i) reading:

"One hour, to include switching or other service performed, is to be allowed as a minimum at each turn-around point where there is one hour or more elapsed time between arrival and departure time of the train."

In both instances, it was urged, there was nothing to indicate switching need be confined to equipment belonging to any particular train.

A study of the applicable sections, the notes and examples thereto, convinces that the governing words in establishing the scope of these assignments are "Article 2 (c) 3:

"Regularly established passenger runs less than 100 miles one way shall be considered as continuous runs, from time ordered for, until laid up at end of the day...."

Again of helpful assistance are the words "until the train is switched" appearing in the "Note".

These in my opinion restrict the requirements of the engineers on such an assignment to the operation of their own locomotives. To permit the company to read into the word "switching" contained in 2 (c) or as it appears in sub-paragraph (i) an obligation to perform general switching operations on other equipment at a terminal point, would be to add duties that should be clearly stated. In my opinion the existing provisions do not make such a requirement obvious to those undertaking the assignments.

For these reasons these claims are granted.

J. A. HANRAHAN
ARBITRATOR