

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.88

Heard at Montreal, Monday, November 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Four time claims for 100 miles each submitted by locomotive engineer J. L. Scarlett and one time claim for 100 miles submitted by locomotive engineer G. S. McKimmie when used beyond the bulletined limits of their Road Switcher assignments.

JOINT STATEMENT OF ISSUE:

On July 21, 25, 28 and 29, 1966 locomotive engineers J.L. Scarlet and G. S. McKimmie were required to operate a Road Switcher assignment beyond the limits indicated in the bulletin. The engineers submitted claims for an additional minimum day's pay for each occasion, claiming a violation of Article 7 Rule A paragraph 3 and Article 47.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(Sgd.) E. J. Davies
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) E. E. HOUSE
ASSISTANT VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

M A. Cocquyt	Labour Relations Assistant, C.N.R., Montreal
D. C. Fraleigh	Senior Agreements Analyst, C.N.R., Montreal
A. Clement	Senior Agreements Analyst, C N.R., Montreal
R. C. Field	System Rules Officer, C. N. R., Montreal
G. Carra	Labour Relations Officer, C N. R. Montreal
R. J. Wilson	Labour Relations Officer, C. N. R., Toronto
B. Buchanan	Trainmaster Road Foreman, C. N. R., Toronto

And on behalf of the Brotherhood:

E. J. Davies	General Chairman, B. L. E., Aurora, Ontario
W. J. Wright	Asst. Grand Chief Engineer, B.L.E., Montreal
J. B. Adair	1st Vice General Chairman, B.L.E., Windsor, Ont.

AWARD OF THE ARBITRATOR

This problem may be reduced to determining whether, as the Brotherhood contends, the terms of a bulletin constitute a legal vehicle between the Company and an Engineer.

The facts established that on July 21, 25, 28 and 29, 1966, locomotive engineer J. L. Scarlett operated a Road Switcher assignment beyond, as it alleged, the bulletined limits.

Late in 1964 this assignment was bulletined as follows:

"Road Switcher - Montreal - Laprairie - St. Constant (to operate to St. Remi if required) light to Laprairie."

On July 14, 1966 engineer Scarlett was awarded the assignment as a temporary vacancy and continued to man this assignment until July 29, 1966.

It was stated the four claims of Engineer Scarlett were in all pertinent respects similar. Therefore, what occurred on July 21, 1966, was used as a typical example.

On that date Engineer Scarlett was required to move cars from St. Isidore Junction to St. Isidore and return, a distance of 4.0 miles one way. He submitted a claim for an additional 100 miles for that portion of the trip on the basis mentioned, namely, that St. Isidore Junction and St. Isidore were not mentioned in the bulletin establishing the assignment.

As indicated in the Joint Statement of Issue, the Brotherhood claimed this constituted a violation of Article 7, Rule A, Paragraph 3, as well as Article 47 of the collective agreement.

Article 7 - A - (3) reads:

"Engineers will be notified when called whether for straight-away or turn-around 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 blockade or where the line is blocked."

Paragraph (6) of Article 7-Rule A provides that engineers in Road Switcher service are "on a turn-around basis".

Therefore Article 7-A-(3), obviously has no application to Engineers on Road Switcher service, who are officially placed on "turn-around basis". There is no need, in other words, for the notification contemplated in that provision for engineers not so permanently assigned.

Article 47 reads:

"An engineer assigned to a regular run will, if available follow his assignment".

Because Engineer Scarlett did follow his assignment on the dates in

question, there could be no question of Article 47 assisting this claim.

For the Company it was submitted, in effect, that those on Road Switcher service are operating a peculiar type of service. It was said that industries are generally serviced on a regular schedule although their operations and requirements vary from time to time. It was urged that the Company must offer the flexibility required and adjust its services to the varying needs of customers without being "subject to unrealistic penalties". Indicating an acceptance on the part of the parties to this agreement to the necessity for such flexibility is shown by what is contained in paragraph (6) of Article 7, Rule A, stipulating that engineers assigned to this service may be run in and out and through their regularly assigned initial terminal operating on a turn around basis within a radius of 30 miles.

It was stated that the service performed by a road switcher assignment can be likened to the service performed by a yard assignment except that a road switcher operates outside of switching limits and over a larger territory. It followed, therefore, it was claimed, that a road switcher is subject to many variables, such as the number of customers served, the number of cars handled, the amount of spotting required and the volume of switching performed. It was stressed because of these conditions a bulletin could not possibly cover all contingencies.

Of considerable importance to this problem is the unrefuted statement for the Company that no provisions in the collective agreement requires that assignments of any type be bulletined in a specified or precise manner. It was deemed of value, however, to facilitate engineers making a selection of assignments that the bulletin should describe the territory normally expected to be covered by the assignment, to identify the type of service contemplated, to designate days of operation, to name initial and final terminals and to indicate anticipated departure and arrival times.

It was stressed that a bulletin is not intended as a contractual document that would override the special provisions, for example, for switcher operations as contained in paragraph (6) of Article 7, Rule A, stipulating:

"Engineers assigned to Road Switcher Service operating on a turn-around basis within a radius of thirty (30) miles from the shop track switch at the initial terminal will be compensated at a rate per day in excess of the basic daily wayfreight rate as follows:

Further, in paragraph (b):

"Engineers may be run in and out and through their regularly assigned initial terminal without regard for rules defining completion of trips. Time to be computed continuously from the time Engineers are required to leave shop track until time locomotive arrives on shop track at end of day's work..."

There was no dispute that when Engineer Scarlett worked from St. Isidore Junction to St. Isidore and return the movement was within

the radius of 30 miles.

I am in agreement that in order for this claim to succeed there would have to be contained in the agreement something that would limit service to what is contained in a bulletin. I am satisfied such has not yet been negotiated.

Dealing only with Road Switcher Service, I am satisfied that what is in paragraph (6) of Article 7, Rule A is what governs payment for an engineer. In order to constitute a violation of that provision it would be necessary to establish that the duties involved went beyond a radius of thirty miles.

For these reasons this claim is denied.

J. A. HANRAHAN
ARBITRATOR