CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 103

Heard at Montreal, Tuesday, May 14th, 1968

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated article 29 of Agreement 5.1 by establishing an improper rate of pay for Train Messengers in express freight service.

JOINT STATEMENT OF ISSUE:

On February 1, 1964 the Company commenced operating express freight trains and established a rate of pay for Train Messengers in this service at the agreed upon rate for Train Messengers in exclusive passenger service.

The Company advised the General Chairman of the Brotherhood for the Atlantic Region in accordance with Article 29.2 on December 4, 1964.

The Brotherhood later requested the Company to negotiate a rate of pay for Train Messengers in express freight service and the Company contended that the rate it had established was properly set within the framework of the Company's established classification and rate setting procedures.

The Brotberhood has progressed the grievance in accordance with the collective agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd) J. A. PELLETIER	(Sgd) E. K. HOUSE
EXECUTIVE VICE-PRESIDENT	ASST. VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	Labour Relations Assistant, C.N.R. Montreal
W. S. Hodges	Labour Relations Assistant, C.N.R., Montreal
A. J. Del Torto	Labour Relations Assistant, C.N.R., Montreal

And on behalf of the Brotherhood:

J. A. Pelletier — Executive Vice President, C.B.ofR.T.&G.W., Ottawa

AWARD OF THE ARIITRATOR

On February 1, 1964, passenger coaches were removed from Trains 101 and 102. Because passengers were not carried on these trains, they were no longer considered as mixed trains. As they were not considered freight trains and travelled in excess of the freight train speed, they were given a new designation and called Express Freight trains.

Because the agreement does not provide for a rate of pay for either train messengers or train messenger helpers on express freight trains, tbe Company decided to pay them at passenger rates of pay from February 1, 1964 to December 4, 1964, at which time the Company advised the Brotherhood that a rate of pay equivalent to the passenger rate was being established for Express Freight train service. From that date to December 25, 1965, when train messengers were removed from trains between Halifax and Montreal, train messengers in express freight service were paid on the basis of the new rate.

Train messengers are paid a monthly rate of pay, that is a guarantee that such an employee will not receive less than this amount. Other provisions in the agreement allow him additional remuneration when he accumulates more than 4500 miles in passenger service of 2600 miles in mixed train service in any one month.

The article claimed by the Brotberhood to have been breached is 29 of Agreement 5.1. It reads:

> "Notwithstanding the provisions of Article 25.6 when a bona fide new job or position is to be established which cannot be properly placed in an existing classification by mutual agreement, management will establish a classification and rate on a temporary basis."

The crux of the argument presented for the Brotherhood is that train passengers and train messenger helpers should not be treated less favourably than trainmen "operating on the same trains and compensated on the basis of 2800 miles or less per month".

For the Company it was contended that in establishing the rate for express freight service, which could not properly be placed in any existing classification, consideration had been given to Article 21.5 of the Agreement, reading:

> "The classifications and rates of pay for additional positions established on staffs covered by this Agreement shall be in conformity with classifications and rates of pay for positions of similar kind or class covered by this Agreement."

Applying that principle, the Company considered passenger rates of pay and mixed train rates of pay to determine a suitable rate for

this service. The speed at which Express Freight trains travel was found to be equal to or in excess of the speed of passenger trains. On February 1, 1964, as indicated the Company decided that the appropriate rate of pay for train messengers in express freight service should be the same as that for passenger train service. It was stated that after February 1, 1964, when passengers were no longer carried on trains 101 and 102, they were operated on the same passenger time-table schedule as they had prior to that date.

Article 29.5 specifies the Arbitrator's authority in a claim of this nature. It reads:

> "It is specifically agreed that no arbitrator shall have the authority to alter or modify the existing classifications or wage rates but he shall have the authority, subject to the provisions of this Agreement, to determine whether or not a new classification or wage rate has been set properly within the framework of the Company's established classification and rate setting procedure."

Article 27.7 of the Agreement reveals the pattern the parties have provided:

> "(a) The basic monthly rate for a Train Messenger paid on a mileage basis will be $398.09 ($549.29 effective January 1, 1968) for an average monthly mileage of 4500 miles or less in exclusive passenger train service and $388.66 ($507.52 effective January 1, 1968) for an average monthly mileage of 2600 miles or less in mixed train service. All mileage made in exoess of 4500 miles and 2600 miles respectively, will be paid for on a pro rata basis."

It is apparent that the element of speed is an important factor in the distinction made between these two services. The passenger train service is based on an average train speed of 20 miles per hour while that of a train messenger in mixed train service is based on a train speed of 12 1/2 miles per hour.

I am satisfied, therefore, that the rate of pay in question was properly established within the framework of the Company's classification and rate-setting procedure, in accordance with Article 29 of the Agreement. It would seem incongruous that messengers in express freight service should be paid at a rate of pay higher than those in passenger service, both operating at the same average speed.

For these reasons this claim is denied.

J. A. HANRAHAN
ARBITRATOR