CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 115

Heard at Montreal, Tuesday, September 1Oth, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (PRAIRIE REGION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline of five demerit marks assessed Engineer L. Gwinn, Sutherland, Saskatchewan, on February 9th, 1968, citing as basis "failure to carry out instruct- ions with regard to switching train #62, Wynyard, Saskatchewan, February 1st, 1968.

JOINT STATEMENT OF ISSUE:

On February 1st, 1968, Engineer L. Gwinn, handling train #62 Sutherland to Wynyard stopped at the change-off point at the objective terminal. A message was then delivered to him to perform certain work. Engineer Gwinn did not perform the work but immediately on being relieved by the out-going engineer, he proceeded to the booking-in point and booked rest.

The Brotherhood of Locomotive Engineers contends that no offense was determined and the assessment of discipline was in violation of Article 19, Clause (d) of the Collective Agreement. The Company declined the request for removal of the discipline.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) A. C. DOULL	(Sgd.) R. C. STEELE
GENERAL CHAIRMAN	GENERAL MANAGER (P.R.)

There appeared on behalf of the Company:

J. Ramage	Manager Labour Relations, C.P.R., Montreal
P. A. Maltby	Supervisor Personnel & Labour Rel's., C.P.R., Winnipeg
T. R. Alexander -	Supt. Saskatoon Division, C.P.R.

And on behalf of the Brotherhood:

A. C. Doull	General Chairman, B. L. E., Winnipeg

AWARD OF THE ARBITRATOR

The work which Mr. Gwinn was requested to perform upon his arrival at

Wynyard was certain yard switching, the message which was handed to him reading as follows:

> "Incoming train No. 62
>
> Please lift NAHX 51605 on east end track No. 1 next to units. Then change over at east end.
>
> Agent"

This was a properly authorized order relating to switching in the Wynyard yard. Mr. Gwinn, as the joint statement indicates, did not perform the work. At the company's investigation of the matter, held pursuant to article 19 of the collective agreement, Mr. Gwinn stated the following as his reason for not performing the work:

> "Article 23(a) of our collective agreement entitles me to book rest and such rest must be booked on arrival. I booked rest at the first opportunity. I am not required to do switching under the applicable rule if rest required. Board of Adjustment ruling No. 249 confirmed by rulings 649 and 704."

Article 23 of the collective agreement is as follows:

ARTICLE 23

Rest

"(a) Engineer will not be required to leave terminal until he has had at least 8 hours' rest, if requested, but such rest must be booked on arrival.

(b) Train may be laid up for engineer to obtain rest between terminals, after he has been on duty 12 hours, upon advice to train dispatcher."

It is clear to me from a reading of article 23 that its purpose is to ensure that engineers are sufficiently rested either before leaving a terminal, or on trips between terminals. Specifically, article 23(a) provides that when an engineer has arrived at his terminal, he will not then be required to take a train out until he has had at least eight hours' rest. To take advantage of this, however, he must book rest upon his arrival at the terminal.

In the instant case, Mr. Gwinn was not required to take a train out of the terminal. Accordingly, the provisions of article 23 do not apply to his case.

In some circumstances, engineers of incoming trains may be required to perform certain yard switching. These circumstances are set out in article 3(c) (3), which, after recent amendments, reads as follows:

> Shop Track - Engineer will be paid final terminal time, including switching, on a minute basis at pro rata rates from time of reaching outer main track switch or desig- nated point at the final terminal; should train be delayed at semaphore,

> yard limit board, or behind another train similarly delayed, time shall be computed from the time engine reached that point; time shall continue until 15 minutes after engine is placed on designated shop track or is turned over to hostler, inspector or another engineer. Where yard engines are on duty, engineers will be considered released from duty in accordance with applicable rules after yarding their train except that they may be required to perform switching in connection with their own train to place cars containing perishables or stock for servicing or unloading, or to set off rush or bad order cars as directed for future movement. Should they be required to perform other work when yard engines are on duty they will be paid a minimum of 100 miles at yard rates for such service.
>
> Where no yard engine is on duty, road engineers will do necessary yard switching subject to release from duty in accordance witb applicable rules.
>
> Final terminal time shall be included in making up short day.
>
> Run-through - Engineer who operates freight engine running through terminal where engineer regularly changes off will be paid for all time required to be on duty at change-off point on the minute basis, with a minimum payment of 15 minutes.

It would appear that there was no yard engine on duty at the Wynyard Yard. (This point is not without doubt, and I do not make any firm determination of it. It is not essential to the decision of this case, since no objection was taken to the nature of the stock being moved. Thus, even if there were a yard engine on duty, nothing indicates that the work asked of Mr. Gwinn did not come within the scope of article 3(c)(3). The switching requested of Mr. Gwinn in the agent's message came within the scope of "necessary yard switching" referred to in article 3(c)(3). Article 23, referred to by the union did not relieve Mr. Gwinn of that obligation.

The collective agreement does not make express provision for rest in the case of an incoming engineer required to do yard switching. This is not to say that the engineer would not be entitled to rest at some point. This is a matter to be determined in the appropriate circumstances. It may be observed that in this case Mr. Gwinn had reported for work at Sutherland at 12:45, and arrived at Wynyard at 18:55; that is, he had then been on duty for six hours and ten minutes.

The central issue, however, is whether Mr. Gwinn, in the circumstances of this case, was required to carry out the instructions issued to him. It is my conclusion that he was required to carry out those instructions, and, accordingly, that discipline was properly imposed. The discipline - five demerit marks - was of a relatively minor nature, and there is no issue as to its extent.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR