CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.145

Heard at Montreal, Tuesday, March 11th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINIERS

DISPUTE:

Claim submitted by N. E. McLeod for 100 and by D. C Taylor for 100 miles when temporarily promoted to perform service as Locomotive Engineers.

JOINT STATEMENT OF ISSUE:

On December 23, 1967 Fireman/Helper N. E. McLeod was promoted into service as a Locomotive Engineer during a continuous tour of duty while enroute Sydney, N.S. to Havre Boucher, N.S.

On April 3, 1968 Fireman/Helper D. C. Taylor was promoted into service as a Locomotive Engineer during a continuous tour of duty while enroute Havre Boucher, N.S. to Stellarton, N.S.

Both employees were paid for the tour of duty at Fireman/Helper rates for the time in service as such and at Engineer's rates for the time in service as such.

N. E. McLeod submitted a claim for 100 miles based on an alleged violation of Article 7 A (1) of the Collective Agreement by the Company.

D. C. Taylor submitted a claim for 100 miles based on an alleged violation of Article 7 A (1) of the Collective Agreement by the Company.

The Company declined payment of the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) D. E. MCAVOY GENERAL CHAIRMAN	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

M. A. Cocquyt	Labour Relations Assistant, C.N.R., Montreal
C. F. Wilson	Senior Agreements Analyst, C.N.R., Montreal

And on behalf of the Brotherhood:

D. E. McAvoy General Chairman, B.L.E., Montreal

AWARD OF THE ARBITRATOR

The grievors in each case were at work as firemen/helpers when, because of the requirements of operations, they were promoted to be locomotive engineers. In each case the promotions occurred because certain diesel units were not functioning under multiple controls, and it was necessary for the grievors to act as engineers operating certain diesel units independently. I do not decide here whether the grievors were properly promoted to be engineers on the occasions in question, nor do I decide whether there was any "emergency". The fact is that the grievors did act as engineers for a part of their run on these days, and the question is whether they were properly paid.

The grievors claim that they were entitled to be paid for their services as engineers the minimum amount payable for a "basic day", under article 15.1 of the collective agreement. That article provides as follows:

> "ARTICLE 15 - BASIC DAY
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> 15.1 In all classes of service covered by Article 14, 100 miles or less, 8 hours or less, straight-away or turn-around, shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to class of power and service."

In fact the grievors were paid an amount in excess of a "basic day's" pay, but this amount was paid in respect of their complete tours of duty both as firemen-helpers and as engineers. The grievors claim, in essence, that once they were required to work as engineers, they were then entitled to be paid for a basic day as such, without regard to any other entitlement they might have as firemen-belpers In fact, it was stated that they have processed similar claims for minimum daily payment as firemen-helpers as well as the present claims.

The situation is in some respects similar to that dealt with in Case No. 68. In that case the grievor commenced work at 2200 o'clock as a yard helper, and at 2230 was promoted to yard foreman. He worked in the latter classification until 0630 the next morning. He submitted a claim for eight hours at the yard helper's rate, and another claim for eight hours at the yard foreman's rate. The grievor relied on a provision that eight hours or less constituted a day's work. The grievor did not go off duty between assignments, and there was no "automatic release clause. The company paid the grievor on the basis of continuous service at yard foreman's rates: eight hours at pro rata rate and 30 minutes at punitive rate. It was held that there was simply a change of duties within one tour of duty, and that the grievor had been properly paid.

In case No. 68 the grievor worked in two different classifications within one tour of duty. In the instant case, the grievors worked not only in two different classifications, but under two different collective agreements, in the course of one continuous tour of duty. While the grievors were acting as firemen-helpers, their wages and working conditions were governed by a collective agreement between the company and the Brothcrhood of Locomotive Enginemen and Firemen. While they were acting as Engineers, they were subject to the agreement between the company and the Brotherhood of Locomotive Engineers. It is argued that the entitlement to payment is to be calculated under the provisions of each agreement separately, without regard to other payments made in respect of the same day's work.

I am unable to accept this argument. There are a number of provisions in the collective agreement which contemplate that firemen-helpers may act as engineers. There are as well agreements between the parties and the Brotherhood of Locomotive Firemen and Erginemen involving matters of union dues, mileage regulations, seniority rights and other matters. There is no doubt that (whether the promotion of the grievors on the particular occasions in question was proper or not) the promotion of firemen-helpers to engineers in the course of a continuous tour of duty is contemplated by the collective agreement between the company and the Brotherhood of Locomotive Engineers. As in Case No 68, there is no provision for "automatic release", and it cannot be said that the grievors served two tours of duty. The fact is, however, that the grievors served one continuous tour of duty, and the payment which each received met the requirements of this collective agreement.

It should be emphasized that this decision is based on an interpretation of the collective agreement between these parties. It is my view that that agreement contemplates the situation which occurred in this case, and permits the company to consider the total compensation received by the employee for a tour of duty in applying article 15.1. The collective agreement between the company and the Brotherhood of Locomotive Enginemen and Firemen is not before me, and of course I do not deal with any question relating to tbat agreement.

For the foregoing reasons, the grievance.must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR