

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 224

Heard at Montreal, Tuesday, July 14, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Trainman C.F. McGunigal, Prince Albert, October 28, 29 and 30, 1968.

JOINT STATEMENT OF ISSUE:

On October 28, 1968, Trainman C.F. McGunigal was ordered to work as extra brakeman on Railiner Train No. 682, Prince Albert to Saskatoon. On arrival at Saskatoon, his objective territorial, he was released from duty at 2005 hours. He was re-ordered the following morning, resuming duty at 0920 hours, as extra brakeman on Railiner Train No. 681, Saskatoon to Prince Albert.

In addition to the pay for service performed on Trains 682 and 681, Trainman McGunigal submitted claim for 165 3/4 miles at through freight rate of pay for all time released at Saskatoon, namely from 2005 hours October 28 to 0920 hours October 29, 1968. The Company declined payment of the claim and the Union contends that, in refusing to make payment, the Company violated Article 1, Clause (d) of Agreement 4.1.

Similar claims dated October 29 and 30, 1968, for 168 3/4 and 171 3/4 miles, respectively, covering all time released at Saskatoon on those dates were submitted by the grievor and declined by the Company.

FOR THE EMPLOYEES:

(SGD.) J. S. CORBETT  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP  
ASSISTANT VICE PRESIDENT -  
LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	System Labour Relations Officer, C.N.R., Montreal
J. R. Gilman	Labour Relations Assistant, C.N.R., Montreal
R. B. Ferrier	Superintendent Transportation, C.N.R. Saskatoon

And on behalf of the Brotherhood:

J. S. Corbett

General Chairman, U.T.U.(T) - Winnipeg

#### AWARD OF THE ARBITRATOR

For service performed on train 682, Mr. McGunigal was properly paid until the time he was released from duty at Saskatoon at 2005 hours on October 28, 1968. He was also properly paid for service performed on train 681, from the time he commenced duty at 2005 hours on October 28, 1968. While train 682 completed its run on October 28 to Regina, another extra trainman came on duty at Saskatoon, and the grievor was properly off duty at Saskatoon at 2005 hours that day. Saskatoon was his objective terminal.

The grievor was on the spare board at his home terminal of Prince Albert. He was called for train 682 for Saskatoon pursuant to Article 1 (g) (2), the consist of that train so requiring. The train dispatcher's messages relating to the manning of these trains indicated that the trainman was "to be held" at Saskatoon until it was determined whether he would be needed for train 681. If he were not needed, then he would have been able to deadhead back to Prince Albert, a course which, it seems, had often been followed in the past.

As it happened, the grievor was held at Saskatoon, and worked on train 681 on October 29, going on duty at 0920 hours on that day, as has been noted. He was held at an away from home terminal between 2005 hours on October 28 and 0920 hours on October 29, but he was not "on duty" during that time. The question is what payment he was entitled to for that period.

The Union relies on the provisions of article 1 (d) of the collective agreement that "Trainmen held at terminal points after arrival of train has been registered shall be paid for such time at overtime rates". It is apparent from a reading of article 1 (d) as a whole that the word "held" is here used as meaning "held on duty". The term is used in the context of work on a particular train, and the article provides for payment where the employee is on duty before a train leaves and after it arrives at a terminal. It is not intended to refer to all the time between arrival at a terminal, and departure therefrom on some other train; that is, article 1(d) refers to payment for time on duty, not for time off duty.

The collective agreement does provide specifically for payment for time when trainmen are "held" at "other than their home terminal", in article 5, rule 5. Where trainmen are so held for longer than 16 hours, they are entitled to payment under that section. If the grievor's claims were to succeed, article 5, rule 5 would be meaningless. The grievor was held at other than his home terminal for something over 13 hours. This was not long enough to entitle him to payment under article 5, rule 5, and that is the provision which governs his case. I was not referred to any provision in the agreement which would require that he be deadheaded home in these circumstances.

Accordingly, it must be concluded that the grievor was properly paid,  
and the grievance must be dismissed.

J. F. W. WEATHERILL  
ARBITRATOR