CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 304

Heard at Montreal, Wednesday, September 15th, 1971

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CANADIAN PACIFIC RAILWAY COMPANY (PRAIRIE REGION)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Moose Jaw Conductor S. E. Carnduff and crew, for the difference in payment between eight hours at yard rates which was claimed by the employees and 100 miles at through freight rates which was allowed by the Company, in respect of switching service performed at Broadview, Saskatchewan, on February 6th, 1971.

JOINT STATEMENT OF ISSUE:

Conductor Carnduff and crew were ordered at Broadview at 0930 on February 6th, 1971 for Extra 4240 West in straightaway service from Broadview to Moose Jaw. The crew were required to perform switching at Broadview, not in connection with their train in that diesel unit 1404 had to be switched out and placed on the shop track. Due to Diesel Unit 4240 becoming inoperative before train departed from Broadview, the crew were cancelled at 1215 and placed last out in unassigned service. The crew submitted a claim for payment of eight hours at yard rates on the basis of decision given by the Canadian Railway Board of Adjustment No. 1 in Case 471. The Company allowed payrent of 100 miles at through freight rates on the basis of Article 25, Clause (a) which reads:-

"ARTICLE 25 - CALLED AND CANCELLED

(a) Trainmen in all classes of service called for duty and cancelled before starting work will be paid through freight rates on the minute basis of 12 1/2 miles per hour with a minimum of 33 miles and will hold their turn. If cancelled after work has commenced, they will be entitled to not less than 100 miles at the rate of class of service called for and will stand last out in unassigned service and hold their turn in assigned service. The application of this clause is not to result in any duplicate payment."

The Union contends that Article 25, Clause (a) specifies the payment to a crew when cancelled after work has commenced will not be less than 100 miles at the rate of class of service called for and, as Conductor Carnduff's crew were required to perform yard switching not pertaining to their own train they are entitled to payment of yard rates which is greater than the payment allowed by the Company and in accordance with the decision of Case No. 471 of the Canadian Railway

Board of Adjustment No. 1. The Union contends that the Company has misinterpreted Article 25, Clause (a) by allowing this crew payment of only 100 miles at through freight rates.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. T. O'BRlEN GENERAL CHAIRMAN U.T.U.	(SGD.) W. J. PRESLEY REGIONAL MANAGER (PRAIRIE REGION)

There appeared on behalf of the Company:

P. A. Maltby	Supervisor Labour Relations, C.P.R., Winnipeg	
J. Ramage	Special Representative, C.P.R., Montreal	
D. D. Wilson	Labour Relations Officer, C.P.R., Montreal	

And on behalf of the Brotherhood:

R. T. O'Brien	General Chairman, U. T. U.(T)	Calgary

AWARD OF THE ARBITRATOR

The whole of article 25 is as follows:

ARTICLE 25

CALLED AND CANCELLED

(a) Trainmen in all classes of service called for duty and cancelled before starting work will be paid through freight rates on the minute basis of 12 1/2 miles per hour with a minimum of 33 miles and will hold their turn. If cancelled after work has commenced, they will be entitled to not less than 100 miles at the rate of class of service called for and will stand last out in unassigned service and hold their turn in assigned service. The application of this clause is not to result in any duplicate payment.

(b) Trainmen will not be considered to have started work until they have actually started their train or commenced to switch.

On the facts, it is clear that Conduotor Carnduff and crew were called for straightaway service. They were properly required to perform certain switching service, and this work was performed. They therefore had started work, as article 25(b) makes clear. The assignment for which they were called was cancelled after their work had commenced. They were therefore, under article 25(a) entitled to be paid "not less than 100 miles at the rate of class of service

for", and they were then to stand last out in unassigned servioe. The company paid them 100 miles at through freight rates.

In my view, it is clear that the class of service for which they were called was the class of service to which through freight rates would apply. This is the work which was cancelled, and this is the sort of work in respect of which they were entitled to the benefit of the guarantee provided by article 25. Thus, Conductor Carnduff and crew were entitled to be paid not less than 100 miles at through freight rates for the day in question.

It does not appear to be necessary on the facts of this particular case to determine the rate at which the crew were entitled to be paid for the work actually performed. Their claim is not for work performed, but is rather a claim under the guarantee, and the only question to be decided is, what was the rate payable under the guarantee. That rate is the rate of the servioe for which they were called, not the rate of the service which may actually have been performed. Thus, had the crew worked for some longer period in switching work, it may be that they would have been entitled to payment at a higher rate; article 25(a) simply sets out their minimum entitlement. It is not necessary, however, to decide such questions in this case.

The union relied heavily on the decision of the Canadian Railway Board of Adjustment No. 1, in Case No. 471, dated February 14, 1939. In that case, a crew was called for yard switching, and was paid a minimum day at through freight rates. Their claim for payment at yard rates was allowed. It may be observed that it is the provisions of the collective agreement, and in particular of article 25, which are binding on me in the instant case, and not Case No. 471. In any event, it seems clear that under the provisions of article 25, the same result would be reached, in a similar case, as in Case No. 471. The minimum payment is to be made at the rate of the class of service for which employees are called. In that case they were called for yard switching, and, by article 25, would seem clearly to have been entitled to the minimum payment at yard rates. Here, the employees were called for straightaway service from Broadview to Moose Jaw. That determines the rate of their minimum payment.

It may be noted that in paragraph 14 of the union's submission in this case it is stated that the class of service for which the crew was called was "yard switching". If this were so, then of course the grievance would be entitled to succeed. But the plain statement of fact set out in the Joint statement of issue is that the crew were ordered in "straightaway service from Broadview to Moose Jaw". The union argues, in its brief, that the class of service called for was yard switohing "as the road trip which the crew was originally called for did not take place". Of course that class of service never does take place in a case to which article 25 applies, since it applies in cases of cancellation. The fact is that employees were originally called for a road trip. It never took place, and article 25 gives them a guarantee related to the nature of the work lost.

For the foregoing reasons, it must be concluded that the guarantee applicable in this case is one of a minimum of 100 miles at through

freight rates, that being the rate of the class of service called for. It may be repeated, however, that the only issue here decided is that of the nature of the guarantee, and not of any other payment to which employees may be entitled.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR