

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 427

Heard at Montreal, Tuesday, December 11, 1973

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL - PR.REG.)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Conductor J. E. Guy and crew, Kenora, for 21 miles reduced in claim for turnaround service within a trip for movements made on May 26th, 1973, between Dryden and Earl Pit, Ignace Srddivision.

JOINT STATEMENT OF ISSUE:

Conductor Guy and crew were called at Kenora for Extra 8794 East and were given instructions that they were to lift two piggyback cars at Dryden and take to Earl Pit to turn on the wye at that point and return to Dryden to spot these cars in House Track 2 on their return. The crew submitted a claim for miles run from Kenora to Earl Pit back to Dryden and thence to Ignace and for the time at Earl Pit and Dryden. Payment of the time claimed at Earl Pit and Dryden was declined by the Company.

The Union alleges that the Company in declining this claim has violated the provisions of Article 23, Clause (a)(2), which reads.

- "2. Trainmen performing turnaround service within a trip, including back up movement into terminal because of locomotive failure, accident, stalling, etc., will be paid for the actual miles run. The points between which turnaround service is performed or back up movement into terminal is made will be regarded as turnaround points and time at the turnaround points will be paid for in accordance with Article 11, Clause (f). Actual miles paid for will be added to the mileage of the trip and time paid for will be paid in addition to pay for the trip but will be deducted in computing overtime."

FOR THE EMPLOYEES:

(SGD.) R. T. O'BRIEN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) W. J. PRESLEY
GENERAL MANAGER, O & M
PRAIRIE REGION

There appeared on behalf of the Company:

P. A. Maltby	Supervisor Labour Relations, CP Rail, Winnipeg
F. B. Reynolds	Assistant Supervisor, CP Rail, Winnipeg
G. C. Harvey	Assistant Superintendent, CP Rail, Regina
E. T. Sadler	Assistant Superintendent, CP Rail, Kenora
D. D. Wilson	Labour Relations Assistant, CP Rail, Montreal

And on behalf of the Brotherhood:

R. T. O'Brien	General Chairman, U.T.U. (T)	Calgary
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AWARD OF THE ARBITRATOR

The grievors were called in straightaway service for a trip from Kenora (mileage 146.2) to Ignace (Mileage 0.0). It seems they were advised at Kenora that certain switching was to be performed at Dryden. It is that "switching" operation which gave rise to the present claim.

Dryden (Mileage 63.3) was an intermediate station on the grievors' trip from Kenora to Ignace. Because of the operations they had to perform there and because it was necessary to leave the eastbound main track clear so that a following superior train could pass, the grievors left the cars of their train on the westward main track while carrying out the required "switching". This latter operation appears to have been carried out pursuant to a separate train order, it may be that this separate order was unnecessary, and indeed both parties have urged - correctly in my view - that it is the nature of the service performed which is to be considered. No doubt the "switching" movement should be described as a "train" for certain purposes, but that characterization does not resolve the issue in this case, which is whether or not the grievors' work constituted "turnaround service within a trip", within the meaning of Article 23 (a)(2) of the collective agreement.

Having left the cars of the train on the westward main track at Dryden, the grievors then lifted two piggyback cars which had not been part of their train and proceeded with them to Earl Pit (Mileage 59.7), where the cars were turned on the wye. The grievors waited at Earl Pit for the passage of the overdue superior train, and when it had cleared, returned to Dryden and spotted the two piggyback cars as required. They then picked up the cars of their train and resumed the trip to Ignace.

It was said that picking up of the piggyback cars at Dryden, the forward movement to Earl Pit, the turning of cars on the wye, the return movement to Dryden and the spotting of the cars there constituted "switching at Dryden", although I do not think that description is precise. The grievors were paid in respect of the mileage from Dryden to Earl Pit and return, although the basis for this payment is not specified in the material before me. They were not paid for time spent at Dryden or Earl Pit. If indeed the movement Dryden-Earl Pit-Dryden constituted "turnaround service within a trip", then the grievors would be entitled to payment for time at the turnaround points, which would be Dryden and Earl Pit in this case.

In C.R.O.A. Case No.4 it was said that "turnaround service" applies

"within a trip to a movement where a train returned to a station it had already passed, reverses its direction at that station and again proceeds in its original direction to its destination". The Arbitrator in that case emphasized the determining importance of the purpose of the operation, to ascertain if the parties had expressly dealt with such an operation, over and beyond the general scope of Article 23 (a)(2). There, the purpose of the operation was to perform switching, running off the main track at the Goliad Spur. The movement forward to the spur was considered to be a part of the switching operation.

In Case No.134 a crew was engaged in a trip from Alyth to Red Deer. At Olds (Mileage 56.5), cars were moved back to the Amerada Spur, which left the main track at Mileage 52.8. Switching was performed on the Amerada Spur, and subsequently the trip was resumed, the train proceeding again from Mileage 52.8 to Olds, and thence forward to Red Deer. No claim was made pursuant to Article 23 in that case, the issue being whether Article 13, Running off Main Track, applied. In the circumstances of that case, the Article did not apply because it was not established that the engine was run more than one mile off the main track. Although the engine was run more than one mile in the switching operation (which was considered to involve the mileage run back from Olds to the spur, the actual switching, and the return to Olds), that did not bring the situation within Article 13.

In Case No.133, which the Union relies on in the instant case, a crew was engaged in a trip from Alyth to Red Deer, and had instructions to switch a spur at Mileage 48, and then to proceed to Olds to clear another train. When the switching was completed, it seems that there was insufficient time to proceed to Olds, and so the train was moved back from Mileage 48 to Didsbury, later proceeding again from Didsbury, past Mileage 48 toward Olds and Red Deer. The turnaround movement in that case was not, as in Case No.4 or, apparently, Case No.134, a definite part of the switching operation.

On its facts, the instant case must be regarded as analogous to Case No.4 and Case No.134, rather than to Case No.133. Article 23 (a)(2) refers to a particular type of situation. The type of movement there referred to is distinguishable from the closely-related movement referred to in Article 23 (a)(1), as is noted in Case No.305, and of course from other types of movement, such as that referred to in Article 13. The movement in question in the instant case was, essentially, a switching movement which began and ended at Dryden and involved the turning of cars on a wye, located, it seems, on a spur off the main track at Earl Pit. How the grievors' work in performing this movement is reflected in their compensation is not clear from the material before me, although their payment for miles run has been noted. It did not, however, constitute "turnaround service within a trip" within the meaning of Article 23 (a)(2).

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR