CANADIAN RAILWAY OFFlCE OF ARBITRATION

CASE NO. 460

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGlNEERS

DISPUTE:

Claim of Locomotive Engineer L. J. Broten, Edmonton, Alberta, January 3, 1973.

JOINT STATEMENT OF lSSUE:

On January 3, 1973, Locomotive Engineer L. J. Broten was called for 2130 hours to operate freight train B850 Edson to Edmonton, Alberta. After being on duty 4 hours and 15 minutes, he was cancelled and the diesel units were returned to the Shop as air pressure could not be maintained on the train due to severe weather conditions.

Locomotive Engineer Broten claimed a total of 110 miles for the time on duty, January 3, which included three miles, or 15 minutes preparatory time. The Company allowed payment in the amount of 100 miles pursuant to paragraph 58.2, Article 58 of Agreement 1.2.

In declining to pay the 15 minutes preparatory time in addition to the 100 miles, the Brotherhood alleges that the Company has violated paragraph 14.1, Article 14 of the Agreement 1.2.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) A. J. SPEARE	(SGD.) G. H. BLOOMFIELD
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	System Labour Relations Officer, C.N.R., Montreal
M. Delgreco	Labour Relations Assistant C.N.R., Montreal
C. L. Brown	Assistant Superintendent, C.N.R., Jasper, Alberta

And on behalf of the Brotherhood:

A. J. Speare	General Chairman, B.L.E., Edmonton

AWARD OF THE ARBITRATOR

Article 14.1 of the collective agreement on which the Union relies, is as follows:

> "14.1 Locomotive engineers will report for duty 15 minutes prior to departure from the shop or other designated track or change-off point and will be paid for such time on the basis of 12.5 miles per hour at the applicable rate for the performance of preparatory and such other duties as may be required. Time paid under this Article will not be used to make up the basic day."

Now there is no doubt that, having been cancelled after leaving the shop, the grievor was entitled to be paid under Article 58 of the collective agreement. The payment to which he was entitled was "full day with rules and conditions governing the service to which assigned". The grievor was assigned in freight service, and was entitled to the benefit of the provisions of section 2 of the collective agreement, which relate to that service. His claim for a "minimum day", that is 100 miles, was met. This was the "basic day" payment set out in Article 12 of the collective agreement, and would, it seems, be the payment required under Article 58.2.

The grievor's other claims, for "advance time" and "inspection time", as well as that here in question, for "preparatory time", were not paid It is not clear that the basis would be for "advance time" payment in the circumstances, but it is clear from Article 16 that the allowance there provided for "inspection time" could be used to make up the basic day. That claim, then, would not appear to be well-founded. I do not decide those questions, however, as the only matter now before me is the claim for preparatory time as an additional payment to that for the basic day.

It will be noted that the grievor did in fact put in preparatory time as claimed. Had his assignment not been cancelled, he would have been entitled to payment under that head, as well as others. His assignment was cancelled, and he therefore put in a claim for payment pursuant to Article 58.2 and (ignoring the claims which are not material), pursuant to Article 14. lt is the Company's contention that payment under Article 58.2 precludes any additional payment under Article 14, and it relies on the principle of construction that a general provision is superceded by a special provision. That principle, which is not in doubt, applies in cases of otherwise conflicting provisions. ln the instant case, however, there does not appear to me to be necessary conflict between what is provided in Article 58.2 and what is provided in Article 14. It is possible that the provision for payment of "full day" to an employee cancelled after leaving the shop could be read as implicitly excluding any other payment, that is not a nccessary construction, however, and the provision in Article 14 for payment of preparatory time is at the same level of generality as the provision for payment in Article 58.2. Both, indeed, refer to particular sorts of circumstances and set out what payment shall be made therein.

Article 14, however, goes on in its last sentence to a greater degree of particularity, and provides for the case where payment under the "basic day" provision is made. ln such a case (and in this respect Article 14 may be contrasted with Article 16), preparatory time is not to be used to make up the basic day. Article 14, it may be added, is one of the "rules and conditions" governing the service to which the grievor was assigned, and to which reference is made in Article 58.2. Thus, on a reading of the relevant provisions - and as well, on a proper application of the principle that a particular provision supercedes a general (although here it is not a case of "superceding") - it appears that, in the circumstances, payment of preparatory time was proper notwithstanding that there was payment under Article 58.2. There is no ground for considering any past practice which might be contrary to these provisions of the collective agreement.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR