CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 553

Heard at Montreal, Tuesday, June 8th,1976

Concerning

ALGOMA CENTRAL RAILWAY

and

UNlTED TRANSPORTATION UNION (T)
EXPARTE

DISPUTE:

Claim of Conductor R. Keown, Brakeman R. Marquis, Baggageman J. Sandie, and Assistant Baggageman L. Johnson for 32b miles at through rates, October 13, 1975.

EMPLOYEES' STATEMENT OF ISSUE:

lt is the Union's position that the Company exceeded the time limits as provided for, in the collective agreement Article 112, step 3, paragraph 2 - last sentence.

Should the Arbitrator rule otherwise the Union will be prepared to argue the merits of the case, submitted by the Company.

FOR THE EMPLOYEES:

(SGD.) J. SANDIE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

V. E. Hupka	Manager Industrial Relations,AC. Railway, Sault Ste. Marie
S. A. Black	General Manager Rail Division, A.C.Railway, ''
N. L. Mills	Superintendent-Transportation, '' ''

And on behalf of the Brotherhood:

J. Sandie	General Chairman, U.T.U.(T)) - Sault Ste. Marie

AWARD OF THE ARBITRATOR

This is a claim for payment at through rates. The Union's first submission, as in Case No. 552, is that the grievance should be allowed because of the Company's failure to render a timely decision at Step 3 of the grievance procedure. What is said in Case No. 552 in this respect is equally applicable in the instant case, and for the reasons there set out, the first submission is rejected.

On the merits of the case, the facts are that the grievors operated their regular passenger equipment on October 13, 1975, from Hearst to

Steelton. For a part of this trip, from Hearst to Hawk Junction, they also handled a second diesel unit and a caboose, constituting freight equipment, and there appears to be no doubt that for at least part of the trip they were entitled to be paid at freight rates. They were indeed so paid for the trip from Hearst to Hawk Junction; their claim is that they were entitled to freight rates for the whole trip, even though freight equipment was only handled for part of it.

The question is really whether the matter is to be governed by Article 16 or by Article 7 (d). Those articles are as follows:

> "ARTlCLE 16 - COMBlNATION SERVICE
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> Trainmen performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed.
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> ARTICLE 7 - (d)
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> Passenger train crews, when handling a freight car or cars not express .enroute will be paid through freight rates for actual mileage with such car or cars."

It is my view, this was not really a case of "combination service" within the meaning of Artlcle 16, although the effect of that definition was not argued and the matter is not free from doubt. lt is, on the other hand, clear that what occurred on the day in question iits exactly within what is contemplated by Article 7 (d): the grievors constituted a passenger train crew and they handled a "freight car", not express, enroute. Their entitlement, then, is to be paid for actual mileage with such car.

The provisions of Article 7(d) deal with the situation with particularity and precision. While it may be that in the absence of Article 7 (d) the more general terms of Article lo would apply, they cannot prevail over the precise language of Article 7 (d), which clearly disposes of the case.

For the foregoing reasons, the grievance is dismissed.

J.F.W. WEATHERILL
ARBITRATOR