CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 687

Heard at Montreal, Tuesday, November 14, 1978

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATlON UNlON (T)

EXPARTE

DISPUTE:

Claim by Conductor/Pilots commencing May 23rd, 1978 and completed July 27th, 1978 in the proper application of Article 11 of our collective agreement.

EMPLOYEES' STATEMENT OF lSSUE:

Assigned Conductor/Pilots positions were working on an alternating schedule of five days on and ten days off with Hearst, Ontario as the home terminal.

Conductor/Pilots were on a continuous service for the five day period and due to the length of time on duty Article 11 of our collective has formulated their pay when hours exceeds miles. The Company has finally accepted this compensation, but has not fully compensated the Conductor/Pilots according to Article 11.

The United Transportation Union Local 885 contends that Conductor/Pilots be compensated in accordance with proper application of Article 11 of our collective agreement.

FOR THE EMPLOYEES:

(SGD.) J. SANDlE
General Chairman

There appeared on behalf of the Company:

V. E. Hupka	Manager Industrial Relations, AC Rly., Sault Ste. Marie
N. L. Mills	Superintendent Transportation, AC Rly., Sault Ste. Marie

And on behalf of the Brotherhood:

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

AWARD OF THE AHBlTRATOR

The positions in question were created on a temporary basis to deal

with a particular situation, the detouring of CN trains for a period of approximately three months while an extensive track maintenance program was carried out by that Company. An understanding was reached between the parties as to the conditions of the assignment. This included the provision of accommodation and of meal expense, and in particular there was agreement that pay would be on the basis of continuous service so as not to impede movement of trains during the period of detouring. Those appointed to the positions would be on duty for five days, and off for ten, before going back on duty.

The Company has paid the employees concerned, and has applied the provisions of Article 11 of the collective agreement relating to overtime. That article is as follows:

> "Overtime - Freight Service
>
> On runs of one hundred (100) miles or less, overtime will begin at the expiration of eight (8) hours., on runs of over one hundred (100) miles, overtime will begin when time on duty exceeds the miles run divided by twelve and one-half (121/2). Overtime shall be paid for on the minute basis, at a rate per hour of 3/16ths of the daily rate. (See Article 10 in regard to terminal time). Time paid for arbitraries, i.e. time at Franz, Oba, shovelling out snow from switches, changing off diesel units enroute, doubling etc. is not to be included in computing overtime."

In a general way, the assignments in question may be thought of as consisting of on-duty periods of 120 hours. Overtime, in effect, becomes payable after 8 hours. Any difference between calculation on a mileage basis and calculation on an hours basis is not significant for the purposes of this case, which involves not the general entitlement to overtime that is admitted but rather the exception from overtime of certain periods, pursuant to the last sentence of Article 11.

Article 11 became effective, along with other provisions of the collective agreement, after the agreement relating to the piloting positions had been worked out. The new collective agreement provisions, Article 11 among them, are generally applicable, and I see no necessary contradiction between them and any of the provisions of the piloting agreement. If there were, it would be my view that the provisions of the collective agreement would prevail, but the issue does not arise.

The last sentence of Article 11, in my view, really has significance only with respect to the calculatlon of overtIme in mileage-related situations. Where work is performed at some point on a run which has no effect on the mileage of the run (and a number of examples of such work are set out in the last sentence of Article 11), then "arbitrary" payments would be made, to ensure proper remuneration for work performed, without affecting the general scheme of mileage-related payment, including payment for overtime Where "arbitraries" are paid, the time so rewarded is not included in overtime calculation.

ln the instant case, it does not appear that there would really be

any occasion for the payment of "arbitraries". The employees concerned are in continuous service during their five-day tours of duty - or are at least paid on that basis - and there would be no need for the sort of special adjustment represented by an "arbitrary" payment. They are indeed paid for the time they may be at Franz or at Oba or anywhere else, and they are paid for shovelling snow from switches, or whatever else they may do during that period. that is because they are paid in any event, their unusual assignment involving a five-day period of continuous service. "Time at Franz'', or "time at Oba" is no different from time at any other point where the employee may be during such a period of service. Payment for such time is not the payment of an "arbitrary", it is simply payment within the regular course of the assignment, and if it is made in respect of a part of that assignment for which overtime is payable, that does not affect the matter at all, and there is no occasion for reducing the overtime payments to which the employees are entitled under the general provisions of Article 11.

It would appear that "time at Franz" or "time at Oba" calls for the payment of an "arbitrary", whereas time at some other point does not (unless, at that other point, the employee shovels snow, or doubles, or does something else that would entitle him to an arbitrary), because it is only at Franz and Oba that Junction switching is performed. If this is so, the parties might have been wiser to refer to "junction switching'' as an example of an arbitrary and to omit the otherwise puzzling reference to Franz and Oba. It may be that there is some other explanation. I make no specific finding on this point, however, since as I have indicated I do not consider that for the assignment in question there was any occasion for payment of time in the form of "arbitraries".

The grievance is, therefore, allowed. lt is my award that the Company not reduce the overtime entitlements of the employees concerned in the manner described.

J.F.W. WEATHERILL
ARBITRATOR