CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 717

Heard at Montreal, Tuesday, September 11,1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DlSPUTE:

Claim of Locomotive Engineer H.A. Reynolds of Regina, Saskatchewan, for 100 miles at through freight rates on May 25, 1978.

JOlNT STATEMENT OF ISSUE:

On May 25, 1978 Locomotive Engineer Reynolds was working his regular yard assignment at Regina Yard. During this regular tour of duty his assignment was required to go a distance of 2.6 miles beyond the recognized switching limits of Regina terminal to return a portion of a derailed train to Regina Yard.

Locomotive Engineer Reynolds submitted two time claims for May 25, 1978. One claim was for a tour of duty in yard service and a second claim for 100 miles in through freight service.

The Company paid the claim for the tour of duty in yard service as submitted, but declined the claim for through freight service.

The Brotherhood contends that Paragraph 76.1 of Article 76 of Agreement 1.2 (now Paragraph 9.2 of Article 9) was violated by the Company.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) A.J. SPEARE	(Sgd.) S.T. COOKE
General Chairman	Assistant Vice-President - Labour Relations

There appeared on behalf of the Company:

K. G. Macdonald	Manager Operations Control, C.N.R., Montreal
R. Birch	System Labour Relations Officer, C.N.R., Montreal
L. R. Weir	System Labour Relations Officer, Montreal
D. W. Coughlin,	Labour Relations Assistant, Winnipeg

And on behalf of the Brotherhood:

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

AWARD OF THE ARBlTRATOR

There is no dispute as to the facts. On the day in question the grievor worked his assigned O8OO-1600 yard assignment, which was completed at l620. In the course of the day, however, the grievor received instructions to proceed to the site of a derailment which had occurred at a point 2.6 miles south of the recognized switching limits. To carry out these instructions, the grievor left the yard at 0945, returning at 1115. The issue is as to what effect the performance of thls work, which was not within the scope of a usual yard assignment, should have on the grievor's earnings for the day.

The Union's contention is that since the engine was required to go beyond the recognized switching limits the engineer is to be paid "on the same basis as road locomotive engineers'' (Article 36.2), and that by Article 76.1 100 miles is to be paid.

The Company acknowledges that Article 76.2 applies (clearly, the switch engine was required to go beyond the recognized switching limits), and that in respect of the work performed outside switching limits yard locomotive engineers, such as the grievor, are to be "paid on the same basis as road locomotive engineers". The Company does not, however, agree that payment on that basis requires a payment pursuant to Article 76.1.

Article 76.1 is as follows:

> "76.1 On short runs where the mileage of round trips is 50 miles or less, 100 miles and terminal switching will be paid, also overtime. This paragraph does not apply to locomotive engineers in Short Turn-Around Service under Article 9 and Road Switcher Service under Article 23."

In the instant case, had the grievor's assignment for the day involved simply the work outside the switching limits, then it may well be that Article 76.1 would apply. Payment "on the same basis as road locomotive engineers" would involve a payment of 100 miles and terminal switching. Here, however, what was involved was a short trip outside the switching limits and in the course of a day's work in yard service. The yard service provisions of the agreement, while apparently contemplating that yard service engineers may be used in other service, do not appear to deal with the matter of payment therefor. While, as Article 36.2 establishes, the service performed in this case is to be pald for "on the same basis" as road service, that does not necessarily mean that it is to be considered as an entirely separate day's work. Indeed, that would seem to contradict the other provisions of the agreement which appear to contemplate that (at least in some circumstances), yard service engineers may perform other service.

In my view, the most natural reading of the provisions of the collective agreement requlres that, for service such as that in question here, the employee is to be paid as though that service were in the course of road service, and that road service rates apply to it: those rates are applicable, as the Company argues, on a "time or miles" basis. On such a basis the grievor would be entitled to a payment of 18.75 miles, in addition to payment for the entire day at

yard rates.

It would take clearer language than that which appears in either Article 36.2 or Article 76.1 to require the conclusion that where an engineer in yard service is required to go beyond the recognized switching limits he thereupon is to be treated, for pay purposes, as though he were beginning an entirely new day. The effect of such a conclusion would be, in effect, to introduce an "automatic release'' rule, as the Company argues, and there is no such rule in this agreement. Rather, the effect of Article 36.2 is to indicate the general basis on which payment is to be made for that part of the yard engineman's work which requires going beyond the recognized switching limits.

For these reasons, it is my conclusion that (subject to payment of 18.75 miles to which he is entitled) the grievor was properly paid in respect of the day in question. The grievance must therefore be dismissed.

J.F.W. WEATHERILL
ARBITRATOR