

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 811

Heard at Montreal, Wednesday, February 11, 1981

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

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Claims of Locomotive Engineers K.L. McLean and R.G. Visca of Edmonton, Alberta, for yard rates of pay on December 16, 1979 and January 10, 1980 respectively.

JOINT STATEMENT OF ISSUE:

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On December 16, 1979, Locomotive Engineer K.L. McLean was ordered in through freight service and he spent six hours in Calder Yard prior to departure.

On January 10, 1980, Locomotive Engineer R.G. Visca was also ordered in through freight service and he spent six hours in Calder Yard prior to departure.

Both Locomotive Engineers submitted time claims for their respective tours of duty including terminal delay of six hours each at yard rates of pay for the time spent in Calder Yard.

The Company paid the terminal delay of six hours for each employee at through freight rates of pay.

Each employee subsequently submitted a grievance for the difference in the amount claimed at yard rates of pay and the amount paid at through freight rates of pay on the grounds that the Company had violated Paragraph 11.3 of Agreement 1.2.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

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(SGD.) A.J. BALL  
GENERAL CHAIRMAN

FOR THE COMPANY:

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(SGD.) S.T. COOKE

VICE-PRESIDENT-LABOUR RELATIONS

There appeared on behalf of the Company:

K.J. Knox           -- System Labour Relations Officer, CNR,  
                          Montreal

P.L. Ross           -- Coordinator Transportation - Special

Projects, CNR, Montreal

R.A. Mastre      -- Operations Coordinator - Edmonton Terminal,  
CNR, Edmonton  
Edmonton

R.S. Stowe        -- Assistant Superintendent, CNR, Edmonton

K.L. Burton      -- Labour Relations Assistant, CNR, Edmonton

And on behalf of the Brotherhood:

A.J. Ball        -- General Chairman, BLE, Regina

J.P. Riccucci    -- Special Representative, BLE, Montreal

AWARD OF THE ARBITRATOR

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In each case, the grievor was ordered for through freight service, a form of road service to which the provisions of Section 1 of the collective agreement apply. Assignments in yard and transfer service are governed by Section 2.

In each case, as set out in the Joint Statement, the grievor spent in excess of five hours in Calder Yard prior to departure. The grievors claim payment for the time so occupied at yard rates, rather than at the rate set out in Article 11.2, which was the rate paid by the Company.

Article 11 of the collective agreement, which it is proper to consider as a whole, is as follows:

"Article 11

Detention and Switching at Initial and Final Terminals  
and at Turnaround Points

Passenger Service

11.1 Locomotive engineers will be paid on the basis of 12 1/2 miles per hour at the applicable rate at initial terminals from time due to leave shop or other designated track or change-of point until departure of train from station; at final terminals from the time of arrival at station until arrival on shop or other designated track or change-off point, and at turnaround points from time of arrival at station until departure from station.

Freight Service

11.2 Locomotive engineers will be paid on the basis of 12 1/2 miles per hour at the applicable rate at initial terminals from the time due to leave shop or other designated track or change-off point until departure at outer switch; at final terminals from the time of arrival at outer switch until arrival on shop track or other designated track or change-off point, and at turnaround points from time of arrival until departure at outer switch. Outer switch means the switch normally used in heading into the yard and road mileage commences and ends at the outer switch.

11.3 Locomotive engineers required to perform yard work at any one yard in excess of five (5) hours in any one day will be paid at yard rates per hour for the actual time occupied. Time paid under this paragraph will be in addition to payments for road service and may not be used to make up the basic day.

11.4 Time paid under this Article will be in addition to payments for road service and may not be used to make up the basic day."

Article 11 appears within Section 1 of the collective agreement which deals, as I have noted, with road service. With respect to detention and switching at initial terminals (and such was involved in this case), separate provision is made in respect of passenger service and in respect of freight service. The grievors were in freight service. It thus appears that for detention and switching at the initial terminal, Article 11.2 would apply to the grievors' cases. That Article sets out a particular basis of payment for all time from the time due to leave the shop or other designated track or change-off point until the time of departure at outer switch. In each of the present cases that time amounted to some six hours.

While Article 11.2 is of general application in cases such as the grievors', Article 11.3 deals with a special case in which engineers are required to perform yard work: that is where such work is required to be performed in any one yard in excess of five hours in any one day. The grievors were each working within the limits of Calder Yard for six hours on the day in question. If, therefore, it can properly be said that they were "required to perform yard work", then the provisions of Article 11.3 apply, and being more specific than the general provisions of Article 11.2, would prevail in these circumstances.

The collective agreement does not appear to define "yard work". One indication of what might be called yard work is that it is work performed within switching limits, and there are switching limits designated at all points where yard engines are assigned. There may be other types of service performed within a yard, however. Thus work, construction, auxiliary, snow plow, snow spreader or flanging service, may be performed in a "yard tour of duty": Article 61.3. And yard service employees may be used "in any service in the terminal" in cases of necessity: Article 47. The mere fact of being at work within switching limits, therefore, does not necessarily require the conclusion that yard service is being performed.

"Yard work", it may perhaps be said, is the sort of work which yard service employees would typically perform within a yard. To be doing yard work, it would not be necessary that an employee perform any substantial part of the range of yard service work. In the case of work coming within Article 11.3, it is my view that, reading that Article in the context of Article 11 as a whole, what is contemplated is the performance by enginemen of the sort of "yard work" they normally perform within switching limits (switching, train assembly and preparation) to an extent going beyond what would normally be anticipated, that is, beyond what is contemplated by Article 11.1 and Article 11.2. The limits to the application of those Articles are established, in terms of time, by Article 11.3. Put another way, it is my view that the "yard work" referred to in Article 11.3 is the general activity ("detention and switching") with which Article 11 as a whole is concerned. The effect of Article 11.3 is to provide a higher rate of compensation for engineers in respect of such work where it is continued beyond the limit (five hours) therein set out. This, in my view, is the natural and reasonable construction of this provision. What is referred to is the "yard work" portion of the road service assignment.

The circumstances of the instant case were ones in which, as I find, Article 11.3 came into effect. Accordingly, the grievances are allowed.

J.F.W. Weatherill  
Arbitrator