CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 812

Heard at Montreal, Wednesday, February 11, 1981

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Claim by the Brotherhood that Discipline assessed Engineer C.G. Noseworthy was improper and delay to Train #704 on October 22, 1979 was a result of Company violating Articles 65 - 20.2 - 3.3 and 32.1.

EMPLOYEES' STATEMENT OF ISSUE:

On October 22, 1979 Engineer C.G. Noseworthy was provided a Taxi to go to eat, under Eating Article 20.2. In Article 11.2 it states that Engineer will be paid on the basis of 12? miles per hour at the applicable rate at final Terminals from the time of arrival at outer Switch until arrival on Shop Track. Therefore as the Company discontinued Engineer C.G. Noseworthy's pay, he was taken off duty; so it would be only natural to return to Shop Track.

With Engineer C.G. Noseworthy off duty; under Article 32.1 the Train would revert to the Engineer first out in Pool Service on that Sub-division, hence he should have had a 2-hour call under Article 65.

As Engineer C.G. Noseworthy had fulfilled the requirements of Article 3.3 (basic day) he too was entitled to be called under Article 65.

The Company should have given him Merit Marks for coming back and doing work (that he was not entitled to) in order to expedite the movement of Train #704.

FOR THE EMPLOYEES:

(SGD.) A.J. BALL
GENERAL CHAIRMAN

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
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

The circumstances of this case are as follows: On the day in question the grievor was in assigned road switcher service as a locomotive engineer on Train No. 704. He had been ordered at Calder for 1100 hours to operate Train No. 704 Calder Yard to Beamer and return to Calder Yard. On the return portion of the trip, the grievor arrived at North Edmonton at 1800. Due to congestion in Calder Yard it was necessary to hold the train at North Edmonton until space became available in Calder Yard. After waiting for a time, the grievor asked that a taxi be provided so that he and the train crew could go and have a meal. That was done, and the grievor, the conductor and two brakemen left in the taxi at 1920 hours. The employees went by taxi to a hotel 1.1 kilometres away, and the conductor and one of the brakemen went in for their meal. The second brakeman appears to have eaten elsewhere. The grievor then had the taxi take him to the Calder Diesel Shop (7.1 kilometres away) where he got his own automobile and drove to his home in St. Albert (7.6 kilometres) where he had his meal. He then drove back to the shop, left his car, and asked for another taxi to drive him back to his train at North Edmonton. The Company supplied the taxi and the grievor arrived back at his train at 2120. He had been away for two hours. The train left North Edmonton at 2130, arrived Calder Yard at 2210 and the grievor was off duty at 2240.

The conductor and one brakeman had their meal at the hotel and returned to their train at 2000, that is after an absence of forty minutes for the meal. It is not clear when the other brakeman returned, but he was not responsible for any delay to the train. Space was available in Calder Yard by about the time the conductor and brakeman had returned. It is clear that the grievor's conduct resulted in a delay of over an hour.

When the grievor, along with the conductor and brakemen left for their meal, they did not go "off duty". It was proper for them to take time to eat at that point and they had permission to do so; indeed, a taxi was provided for them. The conductor and brakemen, who ate their meal and returned to the train in a reasonable time were paid in respect of that period. That was, I think, quite right. The grievor, however, took far longer than was proper, and went a considerable distance further than was necessary (there would have been nothing wrong with his eating at home if it was nearby), partly at Company expense. In my view, the grievor's conduct amounted to a deliberate delay of his train, a serious offence for which the assessment of demerit marks was justified. In the instant case, I do not consider that the assessment of fifteen demerits was excessive.

In addition to being assessed demerits, the grievor's pay for the day

was reduced by the amount of time which he took to eat, that is, by two hours. Since the grievor was entitled to eat, and since he would, as the others were, have been paid in respect of a reasonable period of time for eating, I think it was excessive to deprive him of payment for the whole of the time he was away. He was penalized for taking excessive time to eat and thus delaying his train. He was entitled to a reasonable time to eat, but he was not entitled to an excessive time. It is only in respect of the excess time taken that a deduction should have been made. In the instant case, it is clear that forty minutes would have been proper. The grievor's pay should have been reduced by one hour and twenty minutes, not by two hours.

For the foregoing reasons, the grievance is allowed in part. It is my award that the grievor be compensated for forty minutes' lost earnings at the appropriate rate. The balance of his claim for compensation is dismissed (the grievor caused a delay and is not entitled to profit therefrom - see Case No. 780), and the grievance relating to discipline is dismissed.

J.F.W. Weatherill
Arbitrator