

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 835

Heard at Montreal, Tuesday, May 12, 1981.

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor T.J. Duguay and crew, Capreol in the amount of 100 miles at through freight rates May 7, 1978.

JOINT STATEMENT OF ISSUE:

On May 7, 1978, Conductors Purdon and Brankley were ordered in straightaway service, for trains 309 and 301 respectively, Capreol to Foleyet. Account of a derailment at Neswabin (west of Foleyet), trains 309 and 301 did not operate to Foleyet and were turned and operated back through Capreol, thence via Sudbury to Chapleau on CP Rail lines. Conductors Purdon and Brankley remained with their respective trains and operated through Capreol to Chapleau and then deadhead Chapleau to Foleyet.

Conductor T.J. Duguay and crew who were standing first-out in unassigned service at Capreol submitted claim in the amount of 100 miles at through freight rates under Article 30.2 account alleged violation of Articles 69.1 and 73.1 of Agreement 4.16.

The Company declined payment.

FOR THE EMPLOYEES:

(SGD.) F.R. OLIVER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S.T. COOKE
VICE-PRESIDENT, LABOUR
RELATIONS

There appeared on behalf of the Company:

R. Birch -- System Labour Relations Officer, CNR, Montreal
M. Delgreco -- Regional Labour Relations Officer, CNR, Toronto
J.M. Letwin -- Assistant Superintendent, CNR, Capreol

And on behalf of the Brotherhood:

F.R. Oliver -- General Chairman, UTU, Toronto
R.A. Bennett -- Vice-General Chairman, UTU, Sarnia

J.M. Hone -- Secretary, General Committee of Adjustment, UTU,
 Ottawa
R. Byrnes -- Local Chairman, UTU, Capreol
R. Proulx -- General Chairman, CN Lines East, UTU, Quebec
 City

AWARD OF THE ARBITRATOR

Conductor Purdon and crew, and subsequently Conductor Brankley and crew were properly ordered in their turn (although each was in unassigned service) for straightaway service from Capreol to Foleyet. The grievor and crew, also in unassigned service, were next in line to be called.

Because of a derailment beyond Foleyet, the trains of Conductors Purdon and Brankley were (at different points), rerouted, so that they had to reverse direction (one at Stackpool, the other at Thorlake), and proceed back through Capreol (the point of origin), to Sudbury, and thence north on CPR trackage to Chapleau, whence, in each case, they were dead-headed to Foleyet, their original destination. The two crews appear to have been paid on somewhat different bases, but there is no issue in this case as far as that is concerned. The question in this case is whether or not Conductor Duguay and crew, the grievors, were run-around when the two trains and crews referred to went through Capreol in the course of the rerouting described.

Article 30.1 prescribes the payment to be made to unassigned trainmen who are available and are run-around. The payment is to be made for each run-around, and the trainmen are to hold their turn out. The question is whether or not there were run-arounds in this case. Article 69.1 simply provides (with respect to unassigned freight crews), that they are to be run first-in, first-out. Article 73.1 is as follows:

"Definition of First-in First-out

73.1 In the application of the first-in first-out rule, Trainmen, if available, will take their turn out of terminals in order of arrival at point where road time ceases. At terminals where there is a series of yards, the words "road time ceases" as used in this Article will be understood to mean the time of arrival at the outer switch of the final yard of the trip. The time of going off duty shall be considered the time of "arrival at point where road time ceases":

- (a) for trainmen who are in switching or similar service at a terminal and are not paid road time during their tour of duty; and
- (b) for trainmen who are in work or construction service."

These provisions do not resolve the question in the instant case, which is whether or not the Purdon and Brankley crews ought to have come off duty, or to have been treated as coming off duty, when their trains reached Capreol (their point of origin) after having been rerouted prior to reaching their original destination. The particular provisions in respect of time for going off duty which appear in Clauses (a) and (b) of Article 73.1 clearly do not apply in the instant case.

The Union, in a very thorough and well-reasoned brief, argued that while there is no "automatic release" clause in the Collective Agreement, there are other rules which clearly establish an "end of trip" and from which the times at which employees on a given run are to go off duty may be established I agree with that general statement, and indeed the Company does not dispute it. I agree too that care must be taken in applying or distinguishing the "trip within a trip" cases and related cases to which I was referred. I would add that I consider any of the decisions made in this Office as open to reconsideration, and that I have re-read and considered the cases referred to by the Union and the arguments made with respect to them. That I believe the decision in this case may be fairly concisely stated is in no way to slight the very thoughtful arguments which were advanced.

In CROA Case No. 6 the Arbitrator dealt with a situation where, as he described it, a trip was made from point "A", a terminal, to point "B", returning to point "A" and then proceeding to point "C" said to be the objective terminal. Such an assignment was held not to be improper, under the terms of the Collective Agreement involved in that case. In dismissing the grievance, the Arbitrator stated that ". . . the foundation for a successful decision in this claim was removed with the deletion of the automatic end of trip rule". I do not consider that the Arbitrator was indicating that there was anything lacking in the presentations made to him, or that he could not properly decide the case. Rather, as I read the award, the Arbitrator was saying that a decision in the Union's favour was not possible in the absence of an "automatic end of trip rule" or equivalent language in the Collective Agreement. There is no automatic end of trip rule in the Collective Agreement between the parties to the instant case, either. Case No. 6 was affirmed in Case No. 197, and has been referred to as well in other cases.

In Case No. 204, which involved the present parties, a regularly assigned crew was called for straightaway service from Brent to Capreol. Before carrying out that assignment, however, the crew first proceeded to Daventry, lifted a spreader, returned to Brent spreading ballast en route, and then proceeded to Capreol. It was held that what was done did not constitute a change in notification, and that the straightaway assignment was not cancelled, but was properly carried out. The situation was contrasted with that in Case No. 196, where it was held that two separate trips occurred: the first where the crew departed Moose Jaw for Swift Current but returned to Moose Jaw because of a derailment before Swift Current, and the second where the same crew then went out from Swift Current to the scene of the derailment, in work train service, as it was held. On return to Swift Current from the first trip, that trip, it

was held, was over. That cannot be said in the instant case. The crews in question did not end their trips to Foleyet when they returned to - or passed through - Capreol. On the contrary they carried on, via alternate trackage, and in fact arrived at their intended destination. What was said in that decision is of interest here:

" . . . I have given consideration to the removal from the Collective Agreement, some years ago, of the "automatic end of trip" rule. Under that rule, there would have been no doubt that the first trip was over upon the return to Swift Current. There is now no such rule, and the trip did not end automatically by virtue only of the return to Swift Current. That is not to say, however, that it did not end."

In that case, the trip did in fact end on the crew's return to Swift Current. In the instant case, however, the situation is quite different, and I find no valid reason to conclude that the Purdon and Brankley crews' trips ended when they passed through Capreol after being rerouted. They in fact carried out their original trips, which ended at Foleyet. Passing even an objective terminal while still en route is not necessarily "arrival" at the terminal and need not mean an end of a trip: as was said in Case No. 779, "it was not until their assignment was completed that the crew could be said to have arrived at the terminal". In the instant case of course, the crews in question did not arrive at Capreol as their destination, but merely passed through it en route, because of the rerouting, and by way of interruption.

In Case No. 362 an unassigned crew called for straightaway service from Foleyet to Capreol performed certain "short turn-around" service before proceeding from Foleyet to Capreol. That was found to constitute one tour of duty. I am not persuaded that that decision was wrong, but in any event the present case is different: here, while the crews in question did "turn around" literally, and pass through Capreol as a result, they did so because of the necessary rerouting of the straightaway service they were performing at all times. They carried out the work for which they were called, even though this involved a rather longer trip than had been anticipated. They did not run-around Conductor Duguay and crew, whose rights were not affected in any way.

For the foregoing reasons, the grievance must be dismissed.

J.F.W. Weatherill,
Arbitrator.