CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 846

Heard at Montreal, Tuesday, July 14, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer P. Seagris, of Thunder Bay, Ontario, July 21, 1980.

JOINT STATEMENT OF ISSUE:

On July 21, 1980, Locomotive Engineer P. Seagris was called to handle unit coal train 4874, Atikokan to Neebing via McKellar Island. He reported for duty at 1225 hours, departing Atikokan at 1415 hours, arriving at Neebing en route to McKellar lsland at 1930 hours. Upon arrival at Neebing, Locomotive Engineer Seagris instructed the head-end trainman to secure the train with handbrakes. After the train was secured, Locomotive Engineer Seagris was transported to the diesel shop and went home to eat at 2030 hours. At 2130 hours, he returned, completed his assignment at 2330 hours and went off duty at 2345 hours.

Upon submission of his time claim, the Company declined to pay the time from 1930 until 2130 on the basis that payment was not provided for employee initiated delay operating by Article 11 of Agreement 1.2.

The Brotherhood contends in refusing to make payment as claimed, the provisions of Article 11 of Agreement 1.2.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) A.J. BALL GENERAL CHAIRMAN	(SGD.) G.E. MORGAN DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Company:

J.A. Fellows -- System Labour Relations Officer, CNR, Montreal

P. Ross -- Co-ordinator Special Projects, Transportation, CNR, Montreal

R.W. Evans -- Superintendent, CNR, Thunder Bay

S.A. McDougald -- Labour Relations Assistant, CNR, Winnipeg

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

This grievance relates to a time claim filed by the grievor. The time claim included some two hours at Neebing: one hour for yarding the train and one hour for eating. The Company disallowed these portions of the claim.

The Union's written submission presented at the hearing of this matter was as follows:

1. Article 11.1 applies at Neebing.

2. Company changing application of Article 11.1 at Neebing by claiming McKellar Island not part of Neebing Terminal.

3. For the Company to penalize an Engineer; the Engineer is entitled to an impartial hearing and responsibility established, Article 86.

4. The Company is attempting to change the application of Article 11.1 by placing a mis-interpretation on Article 65. Article 53 states Officers of the Company and the General Committee of the Brotherhood. As the General Committee of the Brotherhood was not made a party to the interpretation, then the interpretation must be considered void.

5. Article 61.1 states that Switching Limits to be limited to 8 miles from Yard Office in any direction, except that Switching Limits include the Limits of any Town or City and what is generally known as the greater district of certain cities. Under this Article the Company was keeping Locomotive Engineer P. Seagris on duty to perform work he was not entitled to, so were responsible for all delay."

The Company acknowledges that in a general way, Article 11.1 applies at Neebing. There would appear to be no question but that Article 11, which deals with detention and switching at initial and final terminals, and at turnaround points, applies in respect of appropriate claims made for things done at Neebing. In the instant case, while Neebing may have been the grievor's final terminal he

was, at the material times, simply en route. He would, and did, return there at the completion of his assignment.

Article 11.1, it should be noted, deals with employees in passenger service, and since the grievor was in freight service, Article 11.1 has no application. Reference was no doubt intended to Article 11.2. As to the second item in the Union submission, the Company does not appear to be making the claim referred to in this case. As to the third item, disallowance of a claim for wages is not a "penalty" except in an extended sense; it is not the imposition of discipline, and there is no requirement for an investigation. Article 86 of the Collective Agreement has no application to this case. As to the fourth item, Article 65 deals with calling, and Article 53 with the Union's rights of representation. Neither is in issue in this case. Whether or not the grievor was properly called for the assignment in question, the issue is whether or not he was properly paid for his time. The rightness or wrongness of the grievor's claim, and of the Company's disallowance of part of it, is to be determined having regard to the provisions of the Collective Agreement and the circumstances of the case. One party or the other may be wrong as to the application of the agreement. It cannot properly be said, however, that the Company is "changing the application" of some term of the Collective Agreement, any more than the same charge could properly be made against the grievor. As to the fifth item of the Union's submission, switching limits are not really in issue, and there is nothing to support the claim that the Company was keeping the grievor on duty to perform work he was not entitled to. Again, the grievor's claim is for payment for a period of time: the issue is simply whether or not that period should include the two hours in which the grievor caused his train to be tied up, and went home for lunch.

In his original written grievance the grievor himself referred to Article 12 of the Collective Agreement, which deals with release at final terminals. As noted above, however, at the times material to this grievance the grievor had not arrived at Neebing as the final terminal of the trip for which he had been called and was not then under any requirement to yard the train prior to being released. He was still en route at the time in question. The grievor also referred to Article 20.2 of the Collective Agreement. That Article is as follows:

> "Other Road Service
>
> 20.2 Locomotive engineers in road service will have the opportunity of having meals at a reasonable hour by previously advising the Dispatcher."

Article 20.2 certainly applied in the instant case, and there is no doubt that the grievor was entitled to have time to eat. That is not to say, however that he was entitled to delay his train en route for two hours, to be transported to the diesel shop, and then to go home for lunch, being paid all the while. That is, in effect, the claim asserted by the grievance. It is not however, supported by any provision in the Collective Agreement. There is provision for a twenty-minute lunch period, without deduction in pay, for engineers in yard service. There is no such provision for employees in road

service.

In the circumstances of this case, the grievor's time claim was excessive, and the Company properly disallowed that part of it relating to the delay caused by the grievor in tying up his train and going home for lunch. Accordingly, the grievance is dismissed.

J.F.W. Weatherill,
Arbitrator.