

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 847

Heard at Montreal, Tuesday, July 14, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for payment of 50 miles by Locomotive Engineer R.P. Boake account called and cancelled at Melville, Saskatchewan June 24, 1980.

JOINT STATEMENT OF ISSUE:

On June 24, 1980, Locomotive Engineer R.P. Boake was called for 0845 hours at Melville, Saskatchewan for his regularly assigned position in work train service. Locomotive Engineer Boake was to be transported via taxi from Melville to Waldron, Saskatchewan to commence the days work.

At 0920, prior to departing in the taxi, Locomotive Engineer Boake's assignment was cancelled due to a breakdown of a vital piece of equipment which prevented the assignment from working that day. Following the cancellation, Locomotive Engineer Boake submitted two time claims, one for 50 miles for being called and cancelled as per Paragraph 66.1 of Article 66 and a second claim of 100 miles for being "held and not used" as per Paragraph 2.2 of Article 2 of Agreement 1.2.

The Company paid the 100 mile claim for being "held and not used" but declined to pay the called and cancelled claim of 50 miles, stating Locomotive Engineer Boake was adequately compensated for the day.

The Brotherhood protested the declination of the claim for 50 miles, stating Locomotive Engineer Boake was entitled to both wage claims.

FOR THE EMPLOYEES:

(SGD.) A.J. BALL
GENERAL CHAIRMAN

FOR THE COMPANY:

(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

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

There is no doubt that the grievor was called for work train service and that his assignment was thereafter cancelled. He was entitled, by Article 66.1, to 50 miles at the minimum rate for work train service.

The grievor was also entitled to the benefit of the guarantee set out in Article 2.2 of the Collective Agreement. By Article 2.2, engineers assigned to work train service are to be allowed, by way of guarantee, a basic day (eight hours, or 100 miles) at minimum through freight rates for each 24 hours held and not used. It is not disputed that the grievor was entitled to the amount so guaranteed in respect of the period in question.

The Union's position is that the two payments are distinct and unrelated, and that the grievor was entitled to both, especially since entitlement to the "called and cancelled" payment was complete before the guarantee became payable. While I agree the provisions are distinct, and while it is clear that the grievor was entitled to the 50-mile "called and cancelled" payment, it is important to note that the provision for payment in Article 2.2 is by way of guarantee: the amount paid under a guarantee is whatever is necessary to bring a total amount payable up to the level guaranteed. In the instant case, the total payable without the guarantee would have been 50 miles. To meet the guarantee, therefore, the Company would have to pay over some additional amount to bring the total up to what the guarantee requires. In the instant case, that would require an additional payment of 50 miles. The total payable, by virtue of the guarantee, would then be 100 miles.

The "called and cancelled" payment is not expressed to be one in addition to any guaranteed amount, and it can, in my view, quite properly be taken into account in determining what amount, if any, is payable under the guarantee. It may be noted that if it were not so, an employee who performed work, but not enough to make the guaranteed amount, would receive a smaller payment than an employee who did not work at all, but had the luck to be entitled to a payment such as the "called and cancelled" one.

For the foregoing reasons, the grievance is dismissed.

J.F.W. Weatherill,
Arbitrator.