CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 893

Heard at Montreal, Tuesday, December 8, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer G. D. McKinnon of Regina, Saskatchewan, December 19, 1980.

JOINT STATEMENT OF ISSUE:

On December 19, 1980, Locomotive Engineer G. D. McKinnon's freight assignment, Train No. 880, operated Avonlea to Regina via Parry.

For this tour of duty, Locomotive Engineer submitted time return claiming 100 miles from Avonlea to Parry and actual miles from Parry to Regina, as well as all terminal time and time working en route for a total of 264 miles at through freight rates of pay. The Company allowed payment of 186 miles at through freight rates of pay on the basis of straightaway service.

The employee subsequently submitted a grievance for payment of 78 miles at through freight rates of pay, being the difference between the miles claimed and the miles paid. Payment was declined by the Company, and the Brotherhood contends that in refusing to make payment as claimed, specifically Paragraph 9.3, Article 9 of Agreement 1.2, as well as Article 53, account allegedly changing the interpretation and application of Article 65 without negotiation, were violated by the Company.

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

There appeared on behalf of the Company:

J. A. Fellows	- Manager, Labour Relations, Montreal
P. L. Ross	- Coordinator Transportation - Special Projects, Montreal

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

Article 53 of the Collective Agreement is a recognition clause, setting out the union's rights as bargaining agent. It has no relevance to an individual's claim to entitlement to pay under a particular provision of the Collective Agreement. The union's rights of representation are simply not in issue in a grievance such as this.

Article 65 of the Collective Agreement deals with calling. The grievor was called in his turn for the trip in respect of which he claims. I am unable to see how this Article can have been violated in respect of the grievor although, as will be seen, if the grievor's claim were well-founded, it might be argued that he was given too much work, and that some other employee was runaround. That is, if there really was a "short run" in addition to the straightaway service for which the grievor was called, then it may be that some other employee would be entitled to that additional service. In my view, however, there were not two assignments performed.

The grievor was called for two trips, first Regina to Avonlea via Parry, and second the return trip Avonlea to Regina via Parry. It is the second, return trip which is in question. Avonlea is a point between Parry and Regina. When the grievor went from Avonlea to Regina "via" Parry, he first went from Avonlea to Parry, and then went from Parry to Regina, passing through Avonlea. The distance between Avonlea and Parry is 22 miles.

Article 9.3 of the Collective Agreement is as follows:

> "9.3 Except as provided in Paragraphs 9.1 and 9.2, short runs will be paid on the basis of 100 miles one way and mileage and terminal switching the other way, except in cases where overtime is made in either direction, when such overtime will be paid."

It does not appear that Article 9.1 applies, although it may be noted that Article 9.2 might well apply (if this were indeed a case of a "short run"), since the round trip mileage between Avonlea and Parry is less than 50. However that may be, the real question is whether or not there was a "short run". In my view there was not.

On the facts of this case it is clear to me that the grievor made a trip from Avonlea to Regina in straightaway service, in accordance with his call. He was entitled to payment on a mileage basis, and was paid actual miles - first from Avonlea to Parry, then from Parry to Regina. This second "leg" of his trip included passing through Avonlea as an intermediate point. If Avonlea - Parry - Avonlea had been a separate trip, then it would apparently have been a "short run" and a payment greater than actual miles would have been required, pursuant to Article 9. But it was not a separate trip, it was part of the overall trip from Avonlea to Regina ("via" Parry) and there was no reason for a payment greater than one on an actual-miles basis.

If, in the past, the Company has made the additional payment here sought in similar circumstances, such payment is not required under the Collective Agreement. To require the Company to perpetuate the error would indeed be to alter the terms of the Collective Agreement.

In the instant case, it would be wrong to carve out a leg of a trip in order to describe it as a "short run". That expression applies rather to a whole assignment, where the short mileage would result in an unfairly small payment, so that a special provision, such as that set out in Article 9, is called for. That simply does not apply to an assignment such as the one in question here.

There has been no violation of the Collective Agreement, and the grievance is therefore dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.