

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 969

Heard at Montreal, Tuesday, July 13th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer L. I. Donnelly of Sioux Lookout, Ontario for basic day payment for being held and not used on October 10 and 17, 1981.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer Donnelly was in assigned work train service on the Allanwater, Bruce Lake, Redditt and Graham Subdivisions. The assignment was bulletined under the provisions of paragraph 33.20 of Article 33, Agreement 1.2 to the terminal of Sioux Lookout and did not specify the number of days per week to be worked. On Friday October 9, 1981 and Friday October 16, 1981, he was notified that his assignment would not operate until the following Monday October 12, 1981 and October 19, 1981 respectively. He remained at Sioux Lookout, his home, on Saturday and Sunday October 10 and 11, 1981; and Saturday and Sunday October 17 and 18, 1981.

Locomotive Engineer Donnelly claimed two basic days (100 miles) at minimum through freight rates for Saturday October 10, 1981 and for Saturday October 17, 1981.

The Company declined payment. The Brotherhood contends that in refusing to make payment, the Company violated paragraph 2.2 of Article 2, Agreement 1.2 and paragraph 8.2 of Article 8, Agreement 1.2.

FOR THE EMPLOYEES:

(SGD.) A. JOHN BALL
General Chairman

There appeared on behalf of the Company:

R. J. Wiebe - Manager Labour Relations, CNR, Prairie Region,
Winnipeg

FOR THE COMPANY:

(SGD.) G. E. MORGAN
Director
Labour Relations

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The grievor applied for and was awarded the bulletined position in question. It was for work train service, and was "to commence on or about September 2-81" and was said to have "a duration of approximately three weeks".

The grievor did in fact begin work on that assignment on September 2, 1981. The material before me does not indicate how frequently the grievor worked thereafter until October 10, or what were his days off. He would, under Article 8, have been entitled to certain days off, and the material does indicate that the Saturday operation of the assignment varied from week to week.

In any event, the grievor was notified on Friday, October 9 and again on Friday, October 16, that his assignment would not operate on the Saturdays and Sundays immediately following. In this grievance, the grievor claims payment for the Saturdays. The union's argument is, essentially, that since the bulletin gave a starting date and an approximate terminating date for the assignment, work time would include all days in between. On that argument, of course, it would appear inconsistent not to claim for Sundays as well as for Saturdays, but such claim has not been made.

Article 2 of the Collective Agreement deals with guarantees, and Article 2.2 is as follows:

"Work Train Service

2.2 Except as provided in Article 8, locomotive engineers assigned to work train service will be allowed a basic day at minimum through freight rates for each 24 hours held and not used."

It may be observed that it is Article 2 which deals with guarantees, and not Article 33, which deals with the manning of vacancies. The guarantee in the case of work train service is for a basic day's pay for each 24 hours "held and not used". The grievor was not "held" for the Saturdays and Sundays in question. On the contrary, he was advised that his assignment would not operate. Article 2.2 does not entitle the grievor to payment for those days.

Article 8 of the Collective Agreement is as follows:

"Article 8

Home for Saturdays And/Or Sundays
Work Train Service

8.1 Locomotive engineers assigned to work trains for 5 days per week will be given transportation and allowed to go home for Saturdays and Sundays. When locomotive engineers can go home for Saturdays and Sundays, they will not be paid under paragraph 2.2 of Article 2.

8.2 Locomotive engineers assigned to work trains in excess of 5 days per week will be given transportation and allowed to go home for Sundays. When locomotive

engineers can go home for Sundays they will not be paid under paragraph 2.2 of Article 2.

8.3 When required for operational purposes and notwithstanding the provisions of paragraphs 8.1 and 8.2 two five day periods may be combined into one ten day period with four consecutive days off. Locomotive engineers assigned to such work trains will be given transportation and allowed to go home on the four days off. Locomotive engineers assigned to work trains under the provisions of this paragraph will be paid under paragraph 2.2 or Article 2, except for any of the four days off on which they were allowed to go home."

It would seem clear that on the Saturdays and Sundays in question, the grievor could "go home", or stay at home, and it follows that no payment under Article 2.2 would be necessary. On the two weeks in question the grievor was in fact assigned for 5 days per week. No question arises here under Article 8.3, but the argument appears to be that Article 8.2 applies, and that the assignment was one "in excess of 5 days per week". To the extent that it was, then the grievor would have been entitled to Sundays off, but - where he could go home - without pay. This argument rests on the assumption, however, that the assignment was "in excess of 5 days per week". In my view, that assumption is not justified. If the bulletin gave inadequate information then a grievance relying on any material provisions of the Collective Agreement might have been filed in that respect although there would appear to be no support for such in the Collective Agreement. It is not reasonable, however, to assume that a bulletin in respect of an assignment of indeterminate duration gives a right to work or payment for every day of such undetermined period of time.

The grievor's assignment was not in fact one to work every day for an indeterminate period, nor, I think, can it properly be concluded to have been one for "in excess of 5 days per week". The facts appear to be that the grievor worked five days in some weeks and six in others. He would be entitled to the benefit, and subject to the limitation of either Article 8.1 or Article 8.2, according to the circumstances. Nothing guaranteed him, as the grievance appears to assert, a six-day week.

For all of the foregoing reasons, the grievance is dismissed .