

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 997

Heard at Montreal, Tuesday, November 9th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer G. B. McKay of Winnipeg, Manitoba for additional payment when called and cancelled on February 5, 1982.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer McKay was ordered in through freight service on Train No. 302 for 0030 hours at Symington Yard and came on duty at 2400 hours. At 0635 hours, he was cancelled, because of trainline air brake problems, going off duty at 0645 hours. Locomotive Engineer McKay was compensated for the time on duty on the basis of 6'05" at yard rates and 40 miles at through freight rates. The payment of \$78.71 exceeded the payment required under the daily guarantee.

The Brotherhood appealed the claim on the basis that Locomotive Engineer McKay is entitled to a payment of 100 miles, consisting of 76 miles at yard rates and 24 miles at through freight rates under the provisions of paragraph 66.2 of Article 66.

The Company declined the appeal.

FOR THE EMPLOYEES:

FOR THE COMPANY

(SGD.) A. JOHN BALL
General Chairman

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

There appeared on behalf of the Company:

D. W. Coughlin	- Labour Relations Assistant, CNR, Montreal
K. G. Macdonald	- Manager Labour Relations, CNR, Edmonton
M. Delgreco	- Manager Labour Relations, CNR, Toronto
J. A. Sebesta	- Coordinator Transportation - Special Projects, CNR, Montreal

And on behalf of the Brotherhood:

A. John Ball - General Chairman, BLE, Regina

AWARD OF THE ARBITRATOR

The claim made in this case, according to the Joint Statement of Issue, is for payment of 100 miles pursuant to Article 66.2. Article 66 of the Collective Agreement is as follows:

"ARTICLE 66
Called and Cancelled

66.1 A locomotive engineer cancelled, after accepting a call for service will be paid 50 miles at the minimum rate applicable to the service for which called. A locomotive engineer held for a period exceeding four hours will be paid 12-1/2 miles per hour for class of service for all time held.

66.2 A locomotive engineer cancelled after leaving shop or designated track will be paid 100 miles at the graduated rate applicable to the service called for and will retain his previous standing on the board with the privilege of booking up to eight hours rest at the home terminal or up to six hours rest at other terminals without losing his turn."

Article 66.2 quite clearly applies to this situation. The grievor was called for freight service. Article 66.1 deals with the case where an engineman is cancelled "after accepting a call", and Article 66.2 deals with the case where an engineman is cancelled "after leaving shop or designated track". Here, the grievor operated his units off the shop track to his train. Much later, his outbound trip was cancelled. Thus, Article 66.2 applied, and the grievor was entitled to be paid 100 miles "at the graduated rate applicable to the service called for". That is, as other cases have made clear, a guarantee, and the grievor was in fact paid in excess of the amount payable under that guarantee. Article 66.2 applied, and was complied with. There is no basis for the suggestion that the 100 miles guaranteed should be made up of miles in more than one class of service: Article 66.2 states clearly that the payment is to be made according to "the service called for". The grievor was called for freight service, and it is 100 miles at the rate for that service which was guaranteed, and paid.

The grievor may well, under various provisions, such as Article 3 or Article 11, have been entitled to payment for work performed. The issue in this case, however, is as to the guaranteed payment. In fact the payment made to the grievor exceeded the amount guaranteed, so that Article 66.2 was complied with. It is to be noted that the grievor would, under that Article, retain his previous standing on the board.

I am unable to accept the Union's contention that the grievor, having begun his work, could not be cancelled. That is simply contrary to the Collective Agreement, which contemplates that even after enginemen have left the shop or designated track, their trip may be cancelled. Article 66.2 provides certain protection for them in such cases, and the grievor had the benefit of that in this case.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.