CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1075

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN RAIL DIVISION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims in favour of Locomotive Engineers R. Glover, J. Low, L. Verge, R. Kelly and R. Gifford alleging a violation of the Brockville Runthrough Agreement in that the Company letter of March 20, 1980, does not require crews to set off and/or lift on Run-Through trains operating between Belleville and Montreal.

JOINT STATEMENT OF ISSUE:

On March 20, 1980 the parties negotiated a Memorandum of Agreement and understandings which effectively closed Brockville as a home station for Locomotive Engineers.

One of the Company's understandings was a letter to the effect that crews would not be required to set off and/or lift enroute, except under special circumstances.

Subsequently to the above agreement, the Company has required crews to set off and/or lift on a regular basis on the Kingston Subdivision. As a result of this practice, the grievors have submitted time tickets claiming one hundred (100) miles (minimum day).

The Company has declined such claims and payment on the basis that neither the Memorandum of Agreement nor the March 20th, 1980 letter provided for additional payment in such circumstances. Since the letter only applied to short haul work and that the lifting and/or setting of cars does not constitute short haul work.

The Brotherhood grieved the refusal of the Company to pay the claims submitted in this case through the grievance procedure alleging that:

> (a) the Company is in violation of the letter of March 20th, 1980 with respect to setting off and/or lifting enroute on run-through trains between Belleville and Montreal on the Kingston Subdivision.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) P. M. MANDZIAK (SGD.) D. C. FRALEIGH

General Chairman

Assistant Vice-President,
Labour Relations.

There appeared on behalf of the Company:

L. L. Band	- Counsel, Toronto
M. Delgreco	- Senior Manager, Labour Relations, CNR, Montreal
H. J. Koberinski	- Manager Labour Relations, CNR, Montreal
W. A. McLeish	- Manager Labour Relations, CNR, Toronto
J. A. Sebesta	- Co-ordinator Transp. - Special Projects, CNR, Montreal
G. Blundell	- System Labour Relations Officer, CNR, Montreal
H. Young	- Assistant Superintendent, CNR, Belleville
J. Muirhead	- Co-ordinator Service Design, CNR, Toronto

And on behalf of the Brotherhood:

M. Church	- Counsel, Toronto
P. M. Mandziak	- General Chairman, BLE, St. Thomas
D. Glover	- Local Chairman, BLE, Belleville

AWARD OF THE ARBITRATOR

The grievors' claims are in respect of work allegedly lost to them by reason of the Company's use of run-through trains to perform certain setting off or lifting of cars at points on the Kingston Subdivision.

The grievors, it appears, are enginemen whose home station was formerly Brockville. Brockville was closed as a home station as a result of a Memorandum of Agreement signed on March 20, 1980, known as the "Brockville Run-Through Agreement" and which permitted certain trains, operating essentially between Montreal and Toronto (with enginemen changing at Belleville), and which had previously stopped at Brockville to change enginemen, to run through Brockville without a change of enginemen at that point.

At the time that agreement was made, the Company also issued the following letter, setting out its intent with respect to certain work. The material part of that letter (no issue arises here as to its enforceability as though it were part of the Collective Agreement), is as follows:

> "During these negotiations, we discussed the matter of run-through trains doing short haul work and advised you that it was not our intention to have run-through trains perform such work. In fact, as we explained to you during our discussions, our trains have been specifically designed in order to achieve their maximum performance capability. It is therefore not in the Company's interest to have these trains so engaged. The Company has no hesitancy in assuring the Brotherhood that only under

special circumstances will crews be required to set off and/or lift."

Since that time, certain "run-through" trains have regularly performed the work of setting off or picking up cars at Coteau, on the Kingston Subdivision. The Coteau cars are set off or picked up as a block, it would seem. This work had been done before the run-through agreement was made, and it had continued to be done after. The question is whether or not the requirement of such work on a regular basis, following the signing of the run-through agreement, constitutes a violation of the assurances given in the letter set out above.

From the material before me, it appears that very little "short haul work" was done by the run-through trains until recently, apart from what may be said as to the Coteau set-off. The run-through trains would appear not to have picked up or set off cars at other points, save in genuinely exceptional circumstances, as in one case referred to by the Company (an?involving the claim of Engineman Gifford) where five cars were picked up at Regis. These cars were rush loads for Halifax to meet a ship loading. That operation did not constitute a violation of the understanding, and that particular claim would be dismissed in any event.

More recently, however, the Company has developed certain new business, involving the movement of piggyback cars between Toronto and Cornwall. I accept the Company's statement that it would, at least at present, be uneconomical to handle this traffic by a separate or new train, and that if such were required, the business would probably be lost. That consideration, however, is not material to the question whether or not such a movement constitutes "short haul work" of the sort referred to in the letter of March 20, 1980.

The Company contended that a "short haul train" would be either a way freight, or a train which, by reason of frequency of set-offs, qualified under the Conversion Rule, Article 21 of the Collective Agreement, which deals with the case of engineers on through freight or mixed trains, required to load or unload wayfreight or Company material, to switch enroute or to switch in picking up or setting out cars. "Shorthaul work" would be the sort of work normally performed by such trains. Accepting that definition for the purposes of this case, it would appear nonetheless that the movement of traffic from one point to another between the original and final points of a through freight's run would be "short haul" work. That would appear to be, in essence, the Union's prime contention.

While it is not without merit, that contention must be qualified, having in mind the memorandum respecting the Brockville run-through, and the letter of assurances issued by the Company. The memorandum itself contemplates in Clause 6 thereof that run-through trains operating through Brockville may be required to stop to set off, pick up or switch cars. A special payment is provided for such cases, and time so paid is not to be used in the application of Article 21 of the Collective Agreement. In the light of the fact that the Brockville Run-Through memorandum itself contemplates that a run-througn train may perform some setting-off or picking up of cars,

it cannot properly be said that the letter of assurances issued on the same date prevents that. Further, the letter itself refers to the design of the trains in question "to achieve their maximum performance capability" Before, at and since that time the Coteau set-off was part of the regular operation of the trains in question. That particular operation, in my view, cannot properly be said to have been renounced by the letter of assurances.

While I consider that when the letter is read together with the memorandum and in the light of the circumstances in which it was issued, it did not envisage any change with respect to the Coteau set-off, it obviously restricted the Company from giving short-haul work to the run-through trains in other situations, except where "special circumstances" existed. In my view, "special circumstances" would be those arising on some particular occasion (as in the case where it was urgent to transport cars to Halifax, as above mentioned), and would not include the case of regular new work, however generally desirable that may be. In the instant case, the regular setting-off of piggy-back cars at Cornwall would, in my view, be in violation of the letter of assurances.

To this extent, therefore, the grievance succeeds. There is no clear indication as to what relief is appropriate. That the grievance is denied with respect to the Coteau set-off while it is allowed with respect to the Cornwall set off may create an anomalous situation. To allow, as the Union requested,a basic-day payment would, I think, exacerbate that, and would not be justified. The situation has not been described as one in which the Conversion Rule would be of benefit. To the extent that the method of payment set out in Clause 6 of the Brockville Run-Through memorandum would be beneficial to those required to set-off or pick up piggyback cars at Cornwall, that method should be applied, mutatis mutandis, to payment for work performed by the enginemen of run-through trains at Cornwall, until such time as some other method may be negotiated or until, in some other case where this matter may be more fully dealt with, some other method is established.

For the foregoing reasons it is my award that the Company is in violation of the Letter of Understanding with respect to the Cornwall set-off and that the grievors so involved are to be compensated in accordance with what is set out above.

J. F. W. WEATHERILL,
ARBITRATOR.