

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1139

Heard at Montreal, Thursday, September 29, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor J. R. Moriarty and crew, Brockville, for 100 miles at road switcher rate, January 26, 1982.

JOINT STATEMENT OF ISSUE:

On January 26, 1982 Conductor Moriarty and crew arrived Brockville on their road switcher assignment train 590. After putting their train away, the crew was taxied to Prescott to pull train 317 to Brockville.

Conductor Moriarty submitted a time claim for 100 miles at road switcher rate under the provisions of Article 13.1 and 13.3 (now Article 9.7 and 9.9). The Union contends that Conductor Moriarty's time claim is valid.

The Company has declined payment of Conductor Moriarty's time claim.

FOR THE UNION:

(SGD.) R. A. BENNETT
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

D. W. Coughlin - Manager Labour Relations, CNR, Montreal
G. C. Blundell - System Labour Relations Officer, CNR, Montreal
G. L. Edwards - Labour Relations Officer, CNR, Toronto
D. N. Thomas - Trainmaster, CNR, Belleville

And on behalf of the Union:

J. M. Hone - Vice-General Chairman, UTU, Ottawa
R. A. Bennett - General Chairman, UTU, Toronto
T. G. Hodges - Secretary, General Committee, UTU, Toronto

AWARD OF THE ARBITRATOR

This is a claim by Conductor J. R. Moriarty and crew for the payment

of a day's pay in addition to their regular pay at the road switchers rate in accordance with Article 13.3 for their having been "called for extra service....before commencing or after completion of their trip or regular assignment".

At 0900 hrs. on January 26, 1982, Conductor Moriarty and crew commenced the performance of their regularly assigned road switcher - duties operating train 590 eastward from Brockville, Ontario. That particular assignment was completed at approximately 1405 hrs. upon their arrival at the Brockville yard. Trainman Kruise left the work site and proceeded home. Conductor Moriarty and Trainman Abrams continued to complete their duties. Conductor Moriarty, particularly, was required to deliver his bills and register the time of the terminat of the trip. This information was recorded on the register at 1500 hrs.

Trainmaster Thomas dispatched both Conductor Moriarty and Trainman Abrams to Prescott, Ontario, to perform a switching assignment with respect to Train 317. They proceeded to Prescott by taxi and completed the switching assignment after arriving back at Brockville at 1630 hrs. The register indicates that Conductor Moriarty commenced this second assignment when both he and Trainman Abrams taxied to Prescott at 1500 hrs. AT 1630 hrs. both Conductor Moriarty and Trainman Abrams went home.

Conductor Moriarty's crew works a regular eight hour tour of duty between 0900 hrs. and 1700 hrs. The crew's practice, however, is to go home after the completion of their regular assignment. This is not to say, however, that a crew is "automatically released" upon the completion of an assignment given at the outset of the shift. A day's assignment may be varied, modified, and augmented during the course of the crew's tour of duty. But where no variation or modification of its initial assignment occurs, a crew, upon the completion of that assignment, are allowed by the employer to terminate their tour of duty and go home.

The principal issue in this case is whether Conductor Moriarty and Trainman Abrams were "called for extra service" after the completion of their regularly assigned switching duties on Train 590. And in order to determine whether they were "called for extra service" the question that must be determined is whether they had already been "released" from duty in accordance with the practice permitted by the employer at the time they were requested to proceed to Prescott to discharge switching services with respect to Train 317. Article 13.3 reads as follows:

"13.3 Trainmen called for extra service (not including special service or switching required in connection with their own train or regular assignment) before commencing or after completion of their trip or regular assignment will be paid for such extra service not less than a minimum day at the rate of pay and under the conditions applicable to service performed." (Emphasis added).

In having regard to the objective evidence I am satisfied that both Conductor Moriarty and Trainman Abrams had not completed their

regular switching assignment with respect to Train 590 when they were approached by Trainmaster Thomas to undertake a second switching assignment at Prescott. The Register indicates that Conductor Moriarty and Trainman Abrams proceeded by taxi to Prescott at 1500 hrs. At that very hour the Register also shows that Conductor Moriarty's crew had just completed its switching assignment with respect to Train 590. The obvious inference to make from these coincidental events is that Conductor Moriarty and Trainman Abrams were approached to undertake an "additional" assignment well within their regular tour of duty and before their release from duty. In other words, since the grievors had not been released from duty when they were given the assignment in Prescott they could not be considered to have been "called", as Article 13.3 contemplates, to perform "extra services". In support of this conclusion I rely on the decision of the Arbitrator in CROA Case 1124:

"The grievors were called for straight-away through freight service. That was the nature of their regular assignment, which they performed. They were not called for "extra service", although they did perform certain switching, not in connection with their own train, which work was paid for as part of initial terminal time.

It is the Company's prerogative to designate the type of service it requires to have performed. It must, however, use the correct designation for the service required. It is the service which controls the rate of payment. In this case the grievors were called for their regular freight service run, and that was in fact the work performed. The Collective Agreement contemplates that there may be circumstances where a crew, called for one type of service, performs additional work as well. That is the case here. The crew were paid for that additional work. They were not, however, "called for extra service" within the meaning of Article 9.9, and so would not be entitled to a minimum day in respect of that work, in addition to their payment for the service for which they were called."

I have also reviewed the arbitration case relied upon by the trade union in CROA Case 196, in support of the notion that the crew's release time was irrelevant to their entitlement to payment of the one day premium. With respect, that case dealt with the appropriate rates of pay to which the grievor was entitled in having regard to the two distinct assignments that he undertook with respect to "straight-away" and "turnabout" services during his tour of duty. In that instance "nothing turned on" whether the grievor had booked off or was otherwise released in the attachment of an appropriate rate for the services that were performed. In the situation before me I am satisfied that the "additional" assignment performed by the grievors was part of their regular switching responsibilities that was required of them during their tour of duty.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES ,
ARBITRATOR .