CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1340

Heard at Montreal, Tuesday, March 5, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)
(Eastern Region)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for 100 miles at yard rates dated April 9, 1984, on behalf of Locomotive Engineer R. W. Kinney for work performed on arrival at Thunder Bay based on Article 3 (d) (1) B.L.E. Collective Agreement.

JOINT STATEMENT OF ISSUE:

On arrival at Thunder Bay on Train No. 481 on April 9, 1984, Locomotive Engineer R. W. Kinney yarded his train on the West bound Main Line at the designated change-off point for run-through trains. Locomotive Engineer Kinney received instructions to set the third locomotive unit, CP 4734, out of incoming four unit consist and spot it into depot No. 2, place the remaining units in depot No. 3 and place CP 4734 on the Shop Track.

For the setting out of CP 4734 and taking this unit to the Shop Track, Engineer Kinney claimed 100 miles at yard rates.

The Company declined payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) GARRY WYNNE	(SGD.) G. A. SWANSON
General Chairman	General Manager

There appeared on behalf of the Company:

P. A. Pender	- Supervisor, Labour Relations, CPR, Toronto
J. H. Blotsky	- Asst. Supervisor, Labour Relations, CPR, Toronto
R. J. Pelland	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

Garry Wynne	- General Chairman, BLE, Montreal

AWARD OF THE ARBITRATOR

In this case the issue pertaining to the grievor's claim to entitlement of 100 miles premium pay turns on the applicability of

the appropriate provision of the collective agreement. On the one hand, the company claims that the direction given the grievor at the termination of his run was consistent with the provisions for final terminal time as contained in Article 3 (d) (1), paragraph 1, of the BLE collective agreement which reads as follows:

> "Final Terminal Time
>
> Engineer will be paid final terminal time, including switching, on the minute basis from the time the locomotive reaches the outer main track switch or designated point at the final terminal;should train be delayed at semaphore, yard limit board, or behind another train similarly delayed, time shall be computed from the time locomotive reaches that point; time shall continue until locomotive is placed on designated shop track or is turned over to hostler, inspector or another Engineer." (emphasis added).

On the other hand the trade union claims the direction given the grievor was consistent with the company's obligation to pay the 100 mile premium under Article 3 (d) (1), paragraph 4; which reads as follows:

> "Where yard engines are on duty, Engineers will be considered released from duty in accordance with applicable rules after yarding their train except that they may be required to perform switching in connection with their own train to place cars contining perishables or stock for servicing or unloading or to set off rush or bad order cars as directed for future movement. Should they be required to perform other work when yard engines are on duty they will be paid a minimum of 100 miles at yard rates for such service."

The parties are agreed that the grievor was directed to set out one locomotive unit on his incoming locomotive consist of four units at Thunder Bay, Ontario, and to park that one locomotive unit on the shop track. Moreover, it was conceded by the company that had the procedures followed by Locomotive Engineer Kinney applied to taking a regular train car (where no rush due to perishables etc., was involved) the grievor clearly would have been entitled to the 100 mile premium as prescribed by Article 3 (d) (1) paragraph 4. Indeed, it can safely be said that the train unit parked on the shop track would constitute a portion of "a train" to which that Article would apply "after the yarding of that train".

Nonetheless, the trade union representative also conceded that had the grievor been required to park the lead locomotive unit that he

was operating throughout his run then he would have no claim for payment of the premium. In that circumstance Article 3 (d) (1), paragraph 1 dealing with final terminal time would apply. The trade union indeed rests its case on the notion that the locomotive unit that was set off and transferred to the shop track was part of the train consist to which the premium pay of 100 miles would be warranted.

It seems to me that this case must turn on the particular point when the locomotive engineer may be considered to have been released from duty after he has parked his train at the yard in Thunder Bay, Ontario. And, because of the trade union's concession that the company is entitled under Article 3 (d) (1), paragraph 1 to require a locomotive engineer to park his lead unit on the shop track before his release I am satisfied that the same requirement also applied to each of the locomotive units that constitute his entire train consist. Prior to his release the four locomotive units remained a part of his total responsibility and thereby the grievor was governed with respect to those obligations by the directives of his employer inclusive of the parking of one or all of the units on the shop track. Each unit constituted "the locomotive" for which the grievor was obliged to

attend to prior to his release from duty. His pay, accordingly, while complying with those directives was governed by Article 3 (d) (1), paragraph 1 of the BLE agreement.

Absent Article 3 (d) (1), paragraph 1 from the collective agreement, I would certainly have ruled that the procedures undertaken by the grievor in setting off the middle unit and parking it on the shop track would have attracted the premium under Article 3 (d) (1), paragraph 4. I do not agree that the distinction between the two provisions of the collective agreement necessarily should be based on the notion of a locomotive unit or a rail car. What is significant in resolving this dispute is the notion that, despite the performance of the same duties, in the one circumstance the locomotive engineer has not been released from duty and in the other circumstances he has.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.