CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1412

Heard at Montreal, Tuesday, October 8, 1985
Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer R. C. Barber of Edmonton, Alberta for six hours and forty-five minutes at yard rates for work performed on the Beamer Industrial Spur October 6, 1983.

JOINT STATEMENT OF ISSUE:

On October 6, 1983! Locomotive Engineer R. C. Barber was working in turnaround through freight service, Calder to Calder, Alberta via the Beamer Spur.

Locomotive Engineer Barber submitted a claim for all time spent on thc Beamer Spur, six hours and forty-five minutes, at yard rates. The Company adjusted the time claim and paid the applicable through freight rate on the basis that the Beamer Spur is an Industrial Spur and yard rates are not applicable.

The Brotherhood contends the Company violated paragraph 11.3, Article 11, Agrecment 1.2, in declining yard rates of pay since the six hours and forty-five minutes claimed was for performing yard work at a turnaround point which included the Beamer Spur.

The Company disagrees.

FOR THE BROTHERHOOD:

(SGD.) J. W. KONKIN

Gonoral Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

G. Blundell - System Labour Relations Officer, CNR, Montreal
M. Healey - Manager Labour Relations, CNR, Montreal

And on behalf of the Brotherhood:

J. W. Konkin - General Chairman, BLE, Winnipeg
G. Thibodeau - General Chairman, BLE, Quebec

AWARD OF THE ARBITRATOR

On October 6, 1983, Locomotive Engineer R. C. Barber was working in a turnaround freiqht service, Calder to Calder, Alberta via Beamer Spur. The grievor's turnaround point included the Beamer Spur Yard. Because the grievor spent approximately six hours and forty-five minutes on the Beamer Spur (which included his turnaround) he claimed the yard rate for that period pursuant to ArticIe 11.3 Agreement 1.2 which reads as follows:

"11.3 Locomotive Engineers required to perform Yard work at any one yard in excess of five (5) hours in any one day will be paid at yard rates per hour for the actual time occupied. Time paid under this paragraph will be in addition to payments for road service and may not be used to make up thc basic day." (emphasis added)

The onus that was on the trade union in this case was to establish that the geographic vicinity covered by the Beamer Spur constituted the Beamer Spur Yard. Both parties agreed, in the absence of a definition of "yard" in the collective agrcement, I should be governed by the definition provided under the U.C.0.R. Rules:

"A system of tracks provided for the making up of trains, storing of cars and for other purposes, over which movements not authorized by time table or train order may be made, subject to prescribed signals, ru1es and special instructions."

As the employer effectively demonstrated, not all time spent by Locomotive Enginecr Barber on the Beamer Spur was occupied in performing

yard duties. Rather, the grievor was doing what he was obliged to do.
He was making the necessary stops on the Beamer Spur where the industrial
businesses and undertakings requiring freight service were located.
And, of course, at those points the grievor was performing the required,
scheduled duties that were set out in his timetable. In short, the grievor's
schedulod work while, in part, on the Beamer Spur was involved in performing
freight sorvice. Accordingly for that period of time he was governed for
pay purposes by Article 16.1 of the co11ective agreement which reads as follows:

> "Switching Industrial Spurs - Freight Service
> "16.1 Locomotive engineers required to switch en route
> industrial spurs over one mile in length, and provided
> that such work is performod not Iess than one mile from
> the main line, will be paid at the rate of 12.5 miles per
> hour, as per class of service for all time so occupied, in
> addition to pay for trip. Time paid under this Article
> will not be used to make up the basic pay but will be
> deducted when computing overtime." (Emphasis added)

There is no doubt that a part of the six hours and forty-five minutes claimed by the grievor at the Yard rate was spent at the yard desig-
nated by the company as the Beamer Spur Yard. Nonetheless, in making his
timekeeping report the grievor made no attempt to differentiate the freight
service he performed on the Beamer Spur from the yard service he performed at the Beamer Spur Yard.

Indeed, what the grievor has attempted to do is exploit the company's error in describing his turnaround "at the Beamer Spur". It does
not follow from that mistake that the Beamer Spur is at all coincidental or
co-extensive with the Beamer Spur Yard. And, nothing argued bv the trade
union has convinced me to come to a different conclusion.

Since the grievor has failed to establish that the amount

claimed as yard service was performed in yard service his grievance must be denied.

DAVlD H. KATES,
ARBlTRATOR.