CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2256
Heard at Montreal, Thursday, 14 May 1992
concerning
CANADIAN PACIFIC LIMITED
and
UNITED TRANSPORTATION UNION
DISPUTE:
Claims of Kamloops and Coquitlam train crews for a minimum day (100 miles) when required to perform pull-by inspections of cabooseless trains, other than their own, on initial or final terminal time at North Bend, B.C.
JOINT STATEMENT OF ISSUE:
On several occasions, the Company has ordered the first-out Kamloops or Coquitlam train crews at North Bend, B.C. to report for duty earlier that the time they would be required to be on duty for the train they were to operate back to Kamloops or Coquitlam respectively to perform pull-by inspections on trains other than their own. The crew then remained on duty until they commenced to work on the train which they were to operate back to Kamloops or Coquitlam. On other occasions, the Company has required train crews, after the arrival of their train from either Kamloops or Coquitlam at North Bend, to remain on duty to perform pull-by inspections of trains other than their own. The train crews have made claim for a separate minimum day for performing this duty. In such cases, the crews involved have been compensated for the additional time they were required to be on duty in performing these pull-by inspections at part of their initial or final terminal time pursuant to Article 11, Clauses (d) or (h) of the Collective Agreement.
The Union contends that other employees should have been used to perform these inspections. The Union contends, therefore, that the Company was in violation of Article 11, Clauses (d) and (h) and Article 30A of the Collective Agreement in this case. In view of their opinion that the Collective Agreement has been misapplied, the Union further contends that payment for a minimum day is in order.
The Company submits that payment for the work in dispute properly falls within the ambit of Article 11, Clauses (d) and (h) and that the crews were properly paid. The claims for a minimum day payment have therefore been declined.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) L. O. SCHILLACI
(SGD.) K. WEBB
GENERAL CHAIRMAN
for: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:
R. E. Wilson
Labour Relations Officer, HHS, Vancouver
R. A. Colquhoun
Manager, Labour Relations, Montreal
M. E. Keiran
Manager, Labour Relations, Vancouver
G. C. B. Smith
Senior Advisor, Industrial Relations, Montreal
B. P. Scott
Labour Relations Officer, Montreal
G. Chehowy
Labour Relations Officer, Montreal
And on behalf of the Union:
L. Schillaci
General Chairman, Calgary
AWARD OF THE ARBITRATOR
It is common ground that crews have been employed to perform work in relation to other than their own train, and have been compensated for such work under article 11(d) [Initial Terminal Time] and article 11(h) [Final Terminal Time]. In the Arbitrator's view that practice is plainly at odds with the position taken by the Union in the instant grievance, namely that if crews are to be employed in the pull-by inspection of cabooseless trains, they are to be remunerated under the initial terminal time and final terminal time provisions only when such work pertains to their own train.
Article 11(d) does speak in terms of trainmen being used ``for service incidental to their own train''. However, it does so in reference to members of a crew being used individually. It does not, on its face, prohibit the use of crews for service in relation to trains other than their own trains, or indicate that such service cannot be remunerated as part of the crew's initial terminal time. As noted, the practice of the Company in a number of locations for some years has been to pay employees under the terms of article 11(d) for switching entirely unrelated to their own train, without any objection from the Union.
The language of the agreement is more clear still as regards the payment of final terminal time under article 11(h). It provides, in part, as follows:
11
(h)
Final Terminal Time
Trainmen will be paid final terminal time, including switching, on the minute basis at 12-1/2 miles per hour at rate of class of service performed from the time locomotive reaches outer main track switch or designated point at final terminal; should train be delayed at or inside semaphore or yard limit board, for any reason, or behind another train similarly delayed, time shall be computed from the time train reached that point until the train is yarded.

Members of train crews may be required after train has been yarded at the objective terminal to render individually any service required incidental to the trip just completed. When any member of the crew is used individually, the balance of the crew will be relieved from all responsibility and the man used to perform this service will be paid his regular rate in the class of service employed for all time occupied if held in excess of 15 minutes. If switching is required, not less than three of the crew will be on duty except as provided in article 9 and will be paid final terminal time for all time so used, computed from the time of arrival at the outer main track switch or designated point where road service ends. Switching does not include taking locomotive or self-propelled equipment to the shop or tie-up track.

When trainmen are held for any other service, they will be entitled to all time held computed from the time train is yarded.

The above language fell to be considered by Arbitrator Weatherill in CROA 594. In that case the grievance concerned payment for switching not related to the crew's train performed on arrival. In dismissing the claim he made the following observations:

In my view, the work performed by the grievor's crew did not come within the scope of the second paragraph of article 11(h). It was "switching", but it was not "incidental to the trip just completed" which is the sort of work with which the second paragraph generally deals. The work in this case was "other service", and that is dealt with in the third paragraph of article 11(h). The fact is that that article, in this particular collective agreement, does contemplate that trainmen arriving at a final terminal may perform "other service" after yarding their train. The nature of this service is not limited by anything in any of the paragraphs of article 11, nor was I referred to any other provision in the collective agreement which would limit what might be done. The third paragraph of article 11(h) simply provides for the computation of the time from which such "other service", whatever it might be, is payable.

In the instant case the grievors did perform "other service", not incidental to their trip. They were entitled to payment for "all time held" in accordance with the third paragraph of article 11(h). I was not referred to any provision of this collective agreement by which they would be entitled to eight hours' pay. Accordingly, there does not appear to be any basis on which the grievance could be allowed. It is, therefore, dismissed.

In the instant case, brought by way of a policy grievance, employees have not been called upon to perform switching, as in CROA 594, but rather to perform pull-by inspections of cabooseless trains other than their own. The Arbitrator can see no basis in principle upon which to conclude other than that the employees so assigned would be performing ``other service'' within the meaning of the third paragraph of article 11(h). In the Arbitrator's view the parties should be taken to have negotiated the terms of their collective agreement pertaining to the operation of cabooseless trains in the full knowledge of the existing practice with respect to the switching of other trains payable under the terms of article 11(d) as initial terminal time, as well as the established interpretation of article 11(h) as it pertains to the scope of the phrase ``other service'' within the third paragraph of that provision. There is, in the result, nothing in the collective agreement which would prevent the Company from assigning crews to perform pull-by inspections of trains, other than their own trains, and to pay them for such service as part of initial or final terminal time.

For the foregoing reasons the grievance must be dismissed.

May 15, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR