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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2537

Heard in Montreal, Tuesday, 8 November 1994

concerning

Canadian National Railway Company

and

Canadian Council of Railway Operating Unions (Brotherhood of Locomotive Engineers)

DISPUTE:

Claim of Locomotive Engineer M. Petrescu for 96 miles cut from ticket for trip on May 29, 1991.

JOINT STATEMENT OF ISSUE:

On May 29, 1991, Locomotive Engineer Petrescu was ordered for 1930 on Train 825, Prince George to Endako. After departing Prince George, due to locomotive failure, the train was set out at Miworth (mileage 8, Nechako Sub) and the locomotive consist was returned to Prince George. Locomotive Engineer Petrescu was transported by taxi to Endako and was paid 168 miles for the entire tour of duty.

The Brotherhood contends that Locomotive Engineer Petrescu did not continue the trip for which he was ordered as per article 9.5 of agreement 1.2. The Brotherhood contends the Company, instead, called another locomotive engineer and crew to complete the trip involving Train 825 and ordered Mr. Petrescu on a new trip to deadhead to Endako by taxi. Locomotive Engineer Petrescu is entitled to payment under article 9.2 of Agreement 1.2 as well as the deadhead payment for the deadhead trip to Endako.

The Company disagrees.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) W. A. Wright (SGD.) M. E. Healey

General Chairman FOR: Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

J. B. Dixon - System Labour Relations Officer, Montreal

J. T. Torchia - Manager, Labour Relations, Montreal

V. J. Vena - Coordinator, Transportation, Montreal

D. Gagné - System Labour Relations Officer, Montreal

J. Krawec - System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

W. A. Wright - General Chairman, Saskatoon

M. Simpson - Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

It is common ground that Locomotive Engineer Petrescu was ordered in straight-away freight service on Train 825, Prince George to Endako. Mechanical difficulties in a locomotive unit caused the engines to return to Prince George from Miworth, some eight miles into the run. The grievor was then directed to travel to Endako, deadheading by taxi. The Company paid the grievor pursuant to the terms of article 9.5 of the collective agreement, which provides as follows:

9.5 If engine fails and locomotive engineers are returned to the starting point and then continue trip for which ordered, they will be compensated under the provisions of article 25 for the interrupted portion of the trip.

In the case at hand the Arbitrator is compelled to sustain the

position of the Brotherhood that the circumstances of the grievor did not fall under the terms of article 9.5 of the collective agreement. Mr. Petrescu was ordered to travel to Endako in straight-away freight service on Train 825. In fact, he ultimately travelled to Endako by taxi, when directed to do so by the Company, on a deadhead basis. It is common ground that the Company's reasons for directing the grievor to Endako in that manner were for valid business purposes, in order to properly crew Train 824, due to travel from Endako from Prince George.

The Arbitrator has substantial difficulty with the submission of the Company that when he was directed to deadhead by taxi to Endako, and Train 825 was assigned another locomotive engineer and crew, Mr. Petrescu could be said to have continued the "... trip for which ordered". It seems to the Arbitrator, by a common sense application of the words of article 9.5, that the grievor could only be said to have continued the trip for which ordered if the new power had been assigned to him and he had been directed to return to Miworth, couple to his train and proceed in freight service to Endako. That, however, is not what transpired. Moreover, the case at hand involves the substitution of crews and deadheading, and is distinguishable from those relied upon by the Company (see CROA 197, 204, 208, 362, 372, 835, 893, 1051, 1317, 1619 and 2062).

That finding does not, however, dispose of the grievance. The Brotherhood asserts that the grievor is entitled to payment under the terms of article 9.2 of the collective agreement by reason of the language of article 9.4. Those provisions are as follows:

9.2 Except as provided in paragraph 9.1, on short runs where the mileage of round trips is 50 miles or less, 100 miles and terminal switching will be paid, also overtime.

9.4 If engine fails short of 50 miles and locomotive engineers are returned to the starting point and released from duty, they will be compensated under the provisions of paragraph 9.2.

The language of article 9.4 is clear. Locomotive engineers returned to the starting point of their trip by reason of engine failure and released from duty are entitled to be compensated under the short run provision contained in article 9.2 of the collective agreement. In the case at hand Mr. Petrescu was not released from duty. The Arbitrator fails to see, in that circumstance, how he can invoke the protection of article 9.4, as the Brotherhood asserts. Nor can the Arbitrator find in the award of this Office in CROA 196 authority for its submission that what transpired in the case at hand was a conversion of the grievor's assignment to turnaround service. That decision, made under a different collective agreement with another company, turns in substantial part on the language of the collective agreement there in question, which made specific provision for "turnaround service within a trip". No similar provision is pleaded in the case at hand.

It is not for the Arbitrator to determine what provisions of the collective agreement should properly have been invoked for the payment of Locomotive Engineer Petrescu for his tour of duty of May 29, 1991. The Arbitrator's jurisdiction is limited to those issues raised in the Joint Statement of Issue. For the reasons related, I am satisfied that the Brotherhood is correct that the grievor did not continue the trip for which he was

ordered, as contemplated in article 9.5 of the collective agreement. I am equally satisfied, however, that he cannot claim compensation under the terms of article 9.4 and 9.2 of the collective agreement, as he was not released from duty. Neither party directed the Arbitrator to any other provision or practice under which the grievor might properly have claimed payment. In the result, the grievance cannot succeed.

11 November 1994 _____

MICHEL G. PICHER

ARBITRATOR