CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2599

Heard in Montreal, Thursday, 16 March 1995

concerning

Canadian National Railway Company

and

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

DISPUTE:

Time claims submitted by Locomotive Engineers R. King and J. Tierney for handling radios at Oshawa Yard, Don Yard and Malport Yard.

JOINT STATEMENT OF ISSUE:

As a result of the congestion on the radio channels at Oshawa, Don Yard and Malport Yard, new radios with four additional channels were provided for yard locomotives assigned to these locations. Locomotive Engineers King and Tierney have submitted claims for payment for handling the radios and/or batteries at these locations.

The Brotherhood contends that the claims are valid and should be paid in accordance with Section "C" of Appendix "C" to agreement 1.1 for duties not delineated in Section "B" of Appendix "C".

The Brotherhood further contends that as employees in other locations are monetarily compensated for such duties, Locomotive Engineers King and Tierney should be compensated accordingly.

The Company has denied the claim.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) C Hamilton(SGD.) M. Healey

There appeared on behalf of the Company:

J. P. Krawec– System Labour Relations Officer, Montreal

D. W. Coughlin – Manager, Labour Relations, Montreal

D. Gagné – System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

C. Hamilton – General Chairman, Toronto

AWARD OF THE ARBITRATOR

It does not appear disputed that the extra radios which are the subject of this dispute would, in the normal course, be serviced by maintenance staff. In other words, the maintenance staff would normally be responsible for obtaining, inserting and removing batteries from the radios in question. As the three locations do not, however, have maintenance staff available to perform these functions, they are performed by locomotive engineers, normally in conjunction with their preparatory time at the commencement of a tour of duty.

The performing of additional duties by locomotive engineers at locations where maintenance staff are not available has been the subject of considerable negotiation between the parties over the years. It resulted in the execution of Appendix C to the collective agreement, and the further clarification of that document provided in Addendum 57C. Section B of Appendix C provides an exhaustive list of duties which locomotive engineers are required to perform as part of their normal duties in relation to preparatory and final inspection time. It may be noted that the list in question involves checking equipment such

as flagging devices, and appliances such as fire extinguishers. There is no specific reference within section B to radios or related radio equipment. Section B of Appendix C further contains the following passage:

"There have been several instances since the issuance of the System Bulletin in April 1962 where locomotive engineers have questioned the type of duties required of them on the basis that the duties differed from those listed and reproduced in this Section B. The claims or protests which have been reviewed came within two categories.

"1. If duties which a locomotive engineer is required to perform when taking charge of or releasing an engine are not clearly delineated in the System Bulletin, additional time over and above the 10 or 15 minutes arbitrary, should be paid for the performance of these even if they can be completed within the allotted time allowance; or

"2. A locomotive engineer cannot be required to perform duties other than those listed.

"The listed duties established basic minimal duties required of locomotive engineers under normal conditions when taking charge of or before leaving engines. However, it is recognized that additional work might on occasion arise in connection with the performance of these duties. Defects or abnormalities may be noted during the performance of these duties, and corrective action on the part of the locomotive engineer may be required. In either event if the time required for the performance of these duties exceeds the arbitrary allowance, the locomotive engineer will be compensated for all such excess time on the minute basis until the duties are completed.

"It is also recognized that the performance of the listed duties may differ from time to time because of the many types of locomotives, appliances and operations. On this basis, therefore, the duties listed as being requirements under preparatory and final inspection time are basic and the System Bulletin duties reproduced in this Section B do not attempt to deal with the manner in which they might be performed."

Section C of Appendix C deals with the performance of duties by locomotive engineers other than those which are normally required to be performed, and are delineated in Section B, with particular regard to locations where maintenance staff is not available. It provides, in part, as follows:

"At points where equipment maintenance staff is not available, when duties other than those delineated in Section B hereof or those arising therefrom, are performed by locomotive engineers, the Company will pay for the time so occupied on the minute basis over and above time paid for other service. In other words the Company may require a locomotive engineer to report for duty in advance of the normal time required to report for duty and pay for such time or if the other duties are performed after the locomotive engineer comes on duty he will be paid for all such reasonable time in addition to pay for other service. The duties here referred to can broadly be described as those which are essential in order that a train may proceed without unnecessary delay.

"...

"The duties specified in Section B hereof are related solely to the preparatory and inspection portion of the tour of duty.

Therefore both the duties specified in Section B and those referred to in this Section C are confined to the points at which, and the period of time during which, locomotive engineers take charge of or release an engine under normal conditions."

Addendum 57C to the collective agreement was added, because of apparent differences between the parties with respect to the application of Appendix C of the collective agreement. In the form of a letter dated June 21, 1989, Addendum 57C reads, in part, as follows:

"During the current round of negotiations, the Brotherhood sought clarification with respect to additional compensation when locomotive engineers perform certain work not normally associated with their tour of duty as provided in Appendix C of Agreement 1.1 and Addendum 31 of Agreement 1.2.

"In this regard, the Company informed you that Section B of the aforementioned Appendix C and Addendum 31 outlines the duties of locomotive engineers during preparatory and final inspection time. Section C provides for additional payment when duties other than those specifically designated in Section B are performed at points where maintenance staff is not available. As stated in Section C, the duties referred to can be broadly described as those which are essential in order that the train can proceed without unnecessary delay.

"...

"In summary, at points where equipment maintenance staff is not available, when duties other than those outlined in Section B, are performed by locomotive engineers, they will be paid for time so occupied, on the minute basis, over and above time paid for other service even though this might result in duplicate payment."

The issue in the instant case becomes whether the servicing of the extra radios utilized at Oshawa, Don Yard and Malport Yard falls within the purview of Section B of Appendix C, as part of the normal and expected duties to be performed by a locomotive engineer or whether, as the Brotherhood claims, that work is over and above normal preparatory and inspection time work, to be paid in accordance with Section C. In support of its position the Brotherhood stresses that payments of the kind sought in the instant case have been paid by the Company at Turcot Yard in Montreal, at the rate of ten minutes.

The Company relies, in substantial part, on the concluding paragraphs of Section B of Appendix C. It places particular emphasis on the reference within that part of the appendix to "... the many types of locomotives, appliances and operations." It submits that the radios in question are "appliances" within the contemplation of Section B, and the servicing of them should be seen as a normal part of preparatory time, save where extraordinary circumstances would require a locomotive engineer to perform work beyond the anticipated time.

Upon a review of the provisions of Appendix C, and in particular the language of Addendum 57C, the Arbitrator cannot accept the position of the Company. The servicing of radios forms no part of the listed duties enumerated in Section B of Appendix C. It is noteworthy, however, that other equipment, such as material used for flagging, and appliances such as fire extinguishers, are specifically mentioned. On balance, I am satisfied that the parties did not intend that the transporting

and installing of radio batteries on an extra radio in the cab of a locomotive, at points where maintenance staff are not employed, should be treated as part of the normal preparatory and inspection duties of a locomotive engineer. In the result, that work is to be paid, in accordance with the final paragraph of Addendum 57C, on the minute basis, over and above time paid for other service even though this might result in duplicate payment.

The next question, however, relates to the amount of time properly expended in relation to the claims before the Arbitrator. I am not satisfied, on the evidence before me, that the claims in question are necessarily correct. In the circumstances I deem it appropriate to remit the matter to the parties for the purposes of determining the appropriate level of compensation, and retain jurisdiction in the event of their inability to agree. For the purposes of their deliberations, however, they should appreciate that the Arbitrator has difficulty, in the circumstances of this case, in seeing how the time expended in relation to servicing the radios could have exceeded five minutes on any particular tour of duty.

For the foregoing reasons, and subject to the foregoing comments in respect of compensation, the grievances are allowed.

17 March 1995 _____

MICHEL G. PICHER
ARBITRATOR