

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2760

Heard in Montreal, Thursday, 11 July 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

EX PARTE

DISPUTE:

Time claim of E.R. Anthony dated October 10, 1992.

EX PARTE STATEMENT OF ISSUE

On October 10, 1992, the grievor was called at Niagara Falls to relieve the crew on Train 252 at Fort Erie and thereafter to operate Train 255 to Frontier Yard.

The grievor submitted time claims for payment at Road Switcher rates and, in addition, travelling allowance under the terms of the Fort Erie closure agreement. The Company subsequently declined payment.

The Union, on behalf of the grievor, initiated an appeal of the Company's decision.

The Company declined the appeal.

FOR THE COUNCIL:

(SGD.) G. BINSFELD

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

O. Lavoie	– System Labour Relations Officer, Montreal
S. A. MacDougald	– Manager, Labour Relations, Montreal
J. P. Krawec	– System Transportation Officer, Montreal

And on behalf of the Council:

M. P. Gregotski	– General Chairperson, Fort Erie
W. G. Scarrow	– General Chairperson, Sarnia
G. Bird	– Vice-General Chairperson, Montreal
R. Skilton	– Local Chairperson, Toronto

AWARD OF THE ARBITRATOR

The Arbitrator is unable to sustain the position of the Council to the effect that the grievor was entitled to be paid at road switcher rates. I am satisfied that he was, at all material times, working in through freight service, and should be paid accordingly.

The next issue to be addressed is whether the grievor was entitled to terminal time by reason of delays encountered beyond the outer switch of the Frontier Yard at Buffalo. The Arbitrator is satisfied that the circumstances of the grievor's movement are contemplated by item 4 of the letter of August 18, 1989 negotiated between the parties as a consequence of the closure of the Fort Erie terminal.

Item 4 of that letter reads as follows:

4. Trains enroute to a yard in Buffalo delayed for any reason between "Duff" and the outer switch for that yard, will be paid on the basis of miles up to the point of delay and thereafter final terminal time will commence and be paid for on the basis of 12.5 miles per hour until the train crew is off duty at the destination yard.

It appears to the Arbitrator undeniable that the grievor's train was "enroute to a yard in Buffalo" within the contemplation of item 4 of the above quoted letter. Whether or not the grievor was properly characterized by the Company as being in combination turnaround service, being deadheaded by taxi to and from Niagara Falls both at the outset and at the conclusion of his tour of duty, does not alter the characterization of the train movement in which he was involved. In my view the above noted paragraph was intended to apply to his circumstance.

The next issue concerns whether he is entitled to travelling allowance of one hour and fifteen minutes in accordance with the terms of a further letter, also dated August 18, 1989, negotiated as part of the closure of the Fort Erie terminal. That letter provides as follows:

During our discussions on the run through of Fort Erie the issue of transportation allowance for those employees required to travel between Niagara Falls and Frontier Yard in Buffalo was discussed.

The Company outlined that it intended to have certain crews transported by the Company between Niagara Falls and Frontier Yard before commencing and after completing their tours of duty at Frontier Yard. Accordingly, it was agreed that crews would receive the following allowance for the time occupied travelling between these points at the rate of pay for the service performed:

From Niagara Falls to Frontier Yard 1'15"

From Frontier Yard to Niagara Falls 1'15"

For example, a crew ordered for 0800 at Frontier Yard would report at Niagara Falls at 0645 and would be transported to Buffalo by taxi. The crew would thereafter go on duty for their tour of duty at Buffalo at 0800.

A crew released from duty in Buffalo at say 1600 would be transported by taxi to Niagara Falls and compensated 1'15" for time spent travelling between these two points.

It is understood that time spent travelling between these two points is an allowance, and will not be included in time on duty and that employees will arrive at Niagara Falls suitably prepared to be transported at the time transportation is made available.

The Company seeks to limit the application of the above noted agreement to crews operating in straight-away service between Toronto and Frontier Yard.

In the Arbitrator's view, again, the position of the Council seems preferable, and more consistent with the language of the letter of August 18, 1989. As the first paragraph of the letter indicates, the concern being addressed by the parties was the issue of transportation allowance being provided to employees who would, as a result of the closure of Fort Erie, be required to travel through to Frontier Yard in Buffalo. That is plainly what the grievor was required to do by virtue of the assignment given to him by the Company on October 10, 1992, albeit it was a relief assignment in relation to operating Train 255 from Fort Erie to Frontier Yard. There is, in the Arbitrator's view,

nothing on the face of the letter of understanding of August 18, 1989 to suggest that it would not apply in such circumstances. More specifically, having regard to the final paragraph of the above quoted letter, it is questionable whether the Company can fairly seek to fashion the assignment of an employee so as to treat the travel time between Niagara Falls and Frontier Yard, and *vice versa*, as time on duty, rather than as time spent travelling, for which the allowance is payable. With respect to this issue, therefore, the Arbitrator is satisfied that the interpretation of the Council is to be preferred.

The grievance is therefore allowed, in part. The Arbitrator finds and declares that the grievor was entitled to be paid the sixteen mile arbitrary travel allowance and was entitled to compensation at through freight rates, with final terminal time payable for the delay at Frontier Yard. This matter is referred back to the parties. Should there be any dispute as to the interpretation or implementation of the award, the matter may be spoken to.

July 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR