

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2790

Heard in Calgary, Wednesday, 13 November 1996

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

DISPUTE:

Grievance on behalf of Engineer R.J. Birkett of Moose Jaw for a one hour payment under Article 3(b)(1) in addition to the minimum day.

JOINT STATEMENT OF ISSUE:

On October 20, 1995, Locomotive Engineer Birkett was called for duty at North Portal at 0600 and cancelled there at 0800. During the course of his tour of duty he performed a lift.

The Council's position is that Mr. Birkett is entitled to a payment of 1 hour or 13 miles, under article 3(b)(1) in addition to the minimum day already paid, as it is a non-chargeable premium payment paid over and above the minimum day.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) D. C. CURTIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. SEENEY
FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

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| J. C. Copping | – Labour Relations Officer, Calgary |
| R. V. Hampel | – Labour Relations Officer, Calgary |
| R. E. Wilson | – Director, Labour Relations, Calgary |
| M. E. Keiran | – Manager, Labour Relations, Calgary |
| S. Seeney | – Manager, Labour Relations, Calgary |
| R. M. Smith | – Labour Relations Officer, Calgary |

And on behalf of the Council:

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|---------------|--|
| J. Flegel | – Vice-General Chairman, |
| D. C. Curtis | – General Chairman, Calgary |
| T. G. Hucker | – International Vice-President, Ottawa |
| R. S. McKenna | – General Chairman, Barrie |
| R. J. Lewis | – Vice-General Chairman, Revelstoke |

AWARD OF THE ARBITRATOR

The claim of the Council turns entirely on the application of article 3(b)(1) of the collective agreement. The article in questions reads, in part, as follows:

ARTICLE 3 PREPARATORY, INITIAL AND FINAL TIME

(b) FREIGHT, WAYFREIGHT, MIXED, UNASSIGNED PUSHER AND UNASSIGNED SNOW SERVICE

(1) Engineer will be paid **initial terminal time**, including switching, on the minute basis at pro-rata rates from time ordered for until departure of locomotive from the outer main track switch or designated point.

A locomotive engineer, on a train on which no brakeman is employed, required to perform switching at the initial terminal, except doubling to the extent necessary to assemble the train for departure because yard track(s) is of insufficient length to hold the fully assembled train, will be paid on the minute basis at pro-rata rates for all time so occupied with a minimum payment of one hour **in addition to initial terminal time**. ...

[emphasis added]

It is not disputed that the grievor performed a lift during the course of his tour of duty when called on October 20, 1995, prior to being cancelled at 08:00, and that he never left the terminal.

The instant grievance must, obviously, be resolved on the language of the collective agreement. When regard is had to the terms of article 3(b)(1) the Arbitrator has some difficulty with the interpretation advanced by the Council. Firstly, article 9(a) of the collective agreement deals specifically with the payment of locomotive engineers who are called and cancelled. It provides, in part, as follows:

9 (a) ... If cancelled after taking the locomotive from the shop track or change-off point or in case of a run-through train after having started his train or commenced to switch, an engineer will be paid a basic day at the rate and under the conditions applicable to the class of service called for but will be liable for further service to the extent of a minimum day.

At first blush it would appear that the foregoing provision provides the payment to which a locomotive engineer is entitled when cancelled, even after he or she has commenced to switch. By its very language, article 3(b)(1) would not appear to extend its protection to a locomotive engineer where that individual cannot also claim initial terminal time. As stated in the second paragraph of article 3(b)(1), the premium provided therein is to be additional to initial terminal time. By definition, however, initial terminal time is not payable, and indeed cannot be computed, unless and until a locomotive has departed from the outer main track switch or other designated point, a condition which obviously did not occur in the case at hand. In other words, on the face of the language, it seems clear that a locomotive engineer cannot claim payment for conductor-only switching at the initial terminal under article 3(b)(1), unless he or she is also entitled to initial terminal time.

The Council points to a question and answer entry appearing in the separate collective agreement governing conductors and trainpersons, in further support of its argument. It notes that the material language of article 11(d) of that collective agreement (U.T.U.) is identical to the language of article 3(b)(1) of the agreement governing locomotive engineers, and that it also contains a question and answer section which would indicate that, in the case of conductors, the payment claimed in this case by Locomotive Engineer Birkett would be payable. Be that it may, the Arbitrator is compelled to accept the argument of the Company that there is no similar understanding reflected within the text of the locomotive engineers' collective agreement. Moreover, bearing in mind that the conductor-only agreement may contain trade-offs favourable to conductors and trainpersons, given the concessions implicit in conductor-only operations, it is less than evident that the two collective agreements were necessarily intended to have the same application. That view is the more supportable to the extent that no comparable question and answer entry is to be found in the collective agreement governing locomotive engineers.

In the result, I am compelled to take the collective agreement as I find it. There is no language within the agreement which would give any compelling support to the interpretation advanced on behalf of the Council. For the foregoing reasons the grievance must be dismissed.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR