CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2796

Heard in Calgary, Thursday, 14 November 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim concerning rates of pay for locomotive engineers operating on the Slave Lake, Peace River, Smoky, Grande Prairie and Westlock subdivisions.

JOINT STATEMENT OF ISSUE

On February 14, 1993 the locomotive engineers operating on the Slave Lake, Peace River, Smoky, Grande Prairie and Westlock subdivisions filed a grievance with the Company alleging that they were being paid rates of pay for lines east of Edmonton when rates of pay for lines west of Edmonton should apply on those subdivisions.

The Brotherhood contends that geographic location, as well as paragraphs 1.4(a) and (b) of collective agreement 1.2, supports the Brotherhood's position with respect to rates of pay for locomotive engineers working on the Slave Lake, Peace River, Smoky, Grande Prairie and Westlock subdivisions. Further, the Brotherhood contends that the rates of pay for the subdivisions specified above have been misapplied since the conclusion of the 1981 contract negotiations between the Brotherhood of Locomotive Engineers and CN Rail.

The Company disagrees.

FOR THE COUNCIL:	FOR THE COMPANY
(SGD.) M. S. SIMPSON	(SGD.) J. TORCHIA
FOR: GENERAL CHAIRMAN	FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

S. Blackmore	– Labour Relations Officer, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
S. Michaud	– Labour Relations Officer, Edmonton

And on behalf of the Council:

M. S. Simpson	– Senior Vice-Chairman, Saskatoon
W. A. Wright	– General Chairman, Saskatoon
D. J. Shewchuk	– Vice-Chairman, Vancouver
D. E. Brummund	– Local Chairman, Kamloops

AWARD OF THE ARBITRATOR

The evidence discloses, beyond controversy, that the grievance filed by the Council in February of 1993 is against a practice with respect to the payment of locomotive engineers on the Slave Lake, Peace River, Smoky, Grande Prairie and Westlock Subdivisions which had been followed by the Company, without apparent exception, and without protests by the Council, since 1982. Further, the Company's representatives have tabled in evidence notes taken by Company officers at the time of the takeover of those subdivisions by the Company from the Northern Alberta Railway in January of 1981. On balance, I am satisfied that those notes support the Company's representations that the then newly acquired territory, which was not in mountainous terrain, was deemed appropriate for the payment of wage rates payable for service under the CN collective agreement on flat territory east of Edmonton.

In short, the evidence discloses that the Company agreed to pay the higher wage rate of the former Northern Alberta Railway at the time of the takeover, until such time as the CN collective agreement was renegotiated. From that point forward, without any objection from the Council, locomotive engineers working on the subdivisions in question were consistently paid at the CN collective agreement rate payable for subdivisions east of Edmonton, rather than the slightly higher rate payable for mountain subdivisions west of Edmonton.

On a first basis of analysis, the fact that the Company's practice went unprotested for some fourteen years is, of itself, evidence that the practice was consistent with the understanding of the representatives of both parties who were responsible for the administration of the collective agreement at the time of the acquisition of the Northern Alberta Railway and in the period following the expiry of the then current collective agreement. Alternatively, even if it can be supposed that there was some different understanding, the Council's inaction of some fourteen years can only be construed as a waiver or abandonment of any contrary rights which it may have had. With the renewal of the collective agreement current at the time of this grievance, the parties must be presumed to have been aware of the long standing practice with respect to the rates payable on the territory in question. I am satisfied that they must then be taken to have intended the continuation of the east of Edmonton rates for the term of the collective agreement current at the time of the grievance. On that basis, therefore, and in light of all of the considerations reviewed, the Arbitrator can see no grounds upon which the grievance can be sustained.

For the foregoing reasons the grievance is dismissed.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR