CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2904

Heard in Calgary, Wednesday, 12 November 1997

concerning

Canadian Pacific Railway Company

and

Canadian Council of Railway Operating Unions [Brotherhood of Locomotive Engineers]

DISPUTE:

Violation of article 2(b) and article 2(d) of the current collective agreement on March 19, 1996 when Locomotive Engineer Lund was not permitted to tie up on completion of an unforeseen turnaround trip and a request for payment of 100 miles.

JOINT STATEMENT OF ISSUE:

On March 19, 1996, Locomotive Engineer Lund was ordered for train 263-018 for 12:10 in straightaway service.

Upon reporting for duty, Locomotive Engineer Lund was instructed to secure his train, cut off his locomotives and proceed to assist extra 9528 to Clanwillaim and return to Revelstoke.

Upon arrival back in Revelstoke, Locomotive Engineer Lund was instructed to proceed to Kamloops in straightaway service, in contravention of articles 2(b) and 2(d) and established local understanding.

The Council contends that articles 2(b) and 2(d) outline payment and procedure in the instant case. The Council further contends that the Company is estopped as this matter was agreed upon in 1994 and has been paid and handled under articles 2(b) and 2(d) since that time.

FOR THE COUNCIL: **FOR THE COMPANY:**

(SGD.) D. C. CURTIS **(SGD.) K. E. WEBB**

General Chairman **FOR: GENERAL MANAGER, BRITISH COLUMBIA DISTRICT**

There appeared on behalf of the Company:

K. E. Webb – Manager, Labour Relations, Calgary

G. S. Seeney – Manager, Labour Relations, Calgary

R. M. Smith – Labour Relations Officer, Calgary

R. V. Hampel – Labour Relations Officer, Calgary

J. H. McFarlane – Manager, Yard Operations, Calgary

And on behalf of the Council:

R. Lewis – Local Chairman, Revelstoke

D. C. Curtis – General Chairman, Calgary

J. Flegel – Senior Vice Chairman, Saskatoon

R. Cameron – General Secretary/Treasurer, Revelstoke

B. Knowles – Local Chairman, Lethbridge

AWARD OF THE ARBITRATOR

The evidence discloses that Locomotive Engineer Lund and crew were called at Revelstoke for straightaway freight service for Kamloops, handling train 363-018. When they reported for duty it was learned that another train, Extra 9529 west had stalled on the Shuswap Subdivision, at Clanwilliam, some eight miles from Revelstoke. The grievor and crew were then dispatched to that location, with light engines, to assist in pushing the stalled train over the grade which was causing it a problem, to allow it to proceed on its way. This was done in a short period, whereupon the grievor and crew returned to Revelstoke to couple to their train and to proceed as ordered. It is not disputed that they were paid for all time preceding their eventual departure from Revelstoke, as initial terminal time at 12-1/2 miles per hour, receiving an initial of two hours and forty-one minutes, including the time expended in the assistance of Extra 9529 west. They were therefore paid for a total on duty time of nine hours and thirty minutes, having gone off duty at Kamloops at 21:40 upon the conclusion of their run.

Locomotive Engineer Lund claims entitlement to a further day's pay for the two hours of duty in relation to Extra 9529 west, claiming that he was in fact assigned in "short turnaround service", in respect of which he would be entitled to the payment of a further 100 miles in accordance with article 2(d) of the collective agreement.

The Arbitrator cannot agree. This is not a circumstance in which it can be said that Locomotive Engineer Lund's call was changed, or that he was in fact assigned in turnaround service, as he claims. The facts of the instant case are virtually identical to those dealt with by this Office in **CROA 197**. In that case a conductor and brakeperson had claimed payment for two separate trips when their crew was required to assist a stalled train some eleven miles distant from their originating terminal of Hardisty. In that case they expended some forty minutes in the time required to proceed to assist the stranded train over the controlling grade, and to return to their terminal where they coupled with their own train. In that case Arbitrator Weatherill rejected the claim reasoning, in part, as follows:

> In the instant case Conductor Campbell and crew assisted train No. 976 for a short distance, returned to the point of origin, and then took their own train to its destination. The first part of the trip did not involve their own train, but it was part of the work they were called to do, and within the same class of service. In this case, as in the other cases cited, it is of importance to note that there is no "automatic end-of-trip" or "automatic release" rule in effect. In my view, it is fair to say that the tasks given Conductor Campbell and crew constituted a continuous tour of duty. It would not be fair to say that the work done in assisting train No. 976 constituted a day's work, for which a minimum day's pay could be claimed, nor would it be fair to say that the subsequent trip to Wilkie was a distinct and separate day's work for which (depending on the circumstances) some other crew might have been entitled to be called.

In the instant case the Council sought to establish that there was an "automatic release" rule in force at Revelstoke, following what it submits was an agreement negotiated between the parties in 1994. Upon a closer review of the evidence, including the testimony of Division Manager J.H. McFarlane, it appears that what occurred at most, was a tentative discussion of such a rule, and its ultimate rejection by the Division Manager. Very simply, the Council, which has the burden of proof in this matter, has not tendered documentary evidence to confirm that the parties have in fact agreed to an automatic release rule for emergent turnaround payments. At most what the evidence discloses is that there was some discussion of that matter and a tentative agreement which was ultimately not ratified.

In the circumstances, the Arbitrator cannot find that the grievance is well founded. This is not a circumstance which can fairly be characterized as a change of call, nor is there any local rule which would justify the grievor's claim for a separate payment in respect of turnaround service. For these reasons the grievance must be dismissed.

November 25, 1997 **(signed) MICHEL G. PICHER**

ARBITRATOR