

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2

Heard at Montreal, Monday, July 5th, 1965

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of various conductors and crews that they were required to report for duty at Symington Yard and on the return to Winnipeg were released from duty at Winnipeg Station, without payment of deadheading.

JOINT STATEMENT OF ISSUE:

On various dates at Winnipeg during 1964, conductors and crews were required to report for duty at Symington Yard and on their return to Winnipeg were released from duty at Winnipeg Station, or were required to report for duty at Winnipeg Station and on their return to Winnipeg were released from duty at Symington Yard. The conductors and crews referred to above submitted claims under Article 5, Rule (5) and Rule (9), Clause (a), and Article 5, Rule (6) and Rule 12, Clause (a) of the collective agreements governing conductors and brakemen respectively. All claims were declined by the Company.

FOR THE EMPLOYEES:

(SGD.) H. C. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) T. A. JOHNSTONE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

T. A. Johnstone	– Assistant Vice-President, Labour Relations, Montreal
K. L. Crump	– Assistant Manager, Labour Relations, Montreal
M. A. Cocquyt	– Labour Relations Assistant, Montreal
R. St. Pierre	– Labour Relations Assistant, Montreal
J. D. Hedley	– Employee Relations Officer, Winnipeg

There appeared on behalf of the Brotherhood:

H. C. Walsh	– General Chairman, Winnipeg
G. C. Gale	– Vice-President, Winnipeg

AWARD OF THE ARBITRATOR

The following are reasons for judgement delivered on July 10, 1965, by Mr. J. A. Hanrahan, Arbitrator, following a hearing held before him in Montreal, Quebec, on July 5, 1965, under the authority conferred by terms of an agreement between the parties dated January 7th, 1965.

Mr. Walsh read the Articles referred to in the Statement of the Issue. He then stated that in July, 1962, Symington, in his opinion, became a freight terminal. In February, 1963, a notice was sent the Brotherhood that the Company was eliminating Transcona, located in the Town of Transcona, and Fort Rouge, located in the Fort Rouge District, from the list of terminals. This left Winnipeg, a passenger terminal located in that city. Mr. Walsh contended the Company's failure to add Symington to their list of terminals represented a violation of Article 5, Rule (4) of the conductors' agreement and of Article 4, Rule 6 of the Trainmen's Schedule, reading in both:

Conductors in unassigned service held at other than their home terminal longer than 16 hours, without being called for duty, will be paid one-eighth of the daily rate per hour. ..for the first eight hours in each subsequent twenty-four hours thereafter ...

For the purpose of applying this rule, the Company will designate a home terminal for each crew in pool freight and unassigned service.

Mr. Walsh contended Winnipeg remained a passenger terminal; that it has never been a terminal for freight crews. Therefore, by failing to add Symington to the list of terminals the Company has failed to comply with the requirement of the rule quoted.

Since the inauguration of Symington all freight crews who formerly operated out of Transcona or Fort Rouge have been moved to Symington. There are no freight crews headquartered in Winnipeg.

Prior to April 20, 1961, deadheading between Transcona and Winnipeg had been paid for by the Company. On that date the following notice was received by the Brotherhood:

Conductors, Trainmen, Enginemen, Firemen Helpers:

Running trades employees called to deadhead from Winnipeg Station who request transportation from Symington to Winnipeg Station are not entitled to deadhead miles between the latter points.

Such employees who continue to claim deadhead miles on their trip tickets between Symington and Winnipeg Station will have their trip tickets returned to them for correction.

For the Company, in describing what occurred with the abolition of Fort Rouge and Transcona, Mr. Crump stated there remained in Greater Winnipeg but one terminal in the collective agreement, namely, Winnipeg. Fort Rouge and Transcona became two additional yards in that terminal. The Company's operations became concentrated in the Symington Yard after March, 1963. This was described as a modern, electronically controlled classification hump yard, located south and east of Winnipeg Union Station. Because of this crews were no longer run out of Fort Rouge or Transcona Yards As result of this change the pay allowances formerly paid those deadheading from the Transcona Yards became obsolete.

Mr. Crump told that following meetings with the Brotherhood in 1962 certain arrangements were established to provide free transportation both within Symington Yard and for employees who were required to report for duty or who were released from duty at Symington Yard at times when public transportation was not available. Free transportation arrangements were also made for road crews who reported for duty at one yard within the terminal and who upon return to Winnipeg was released from duty at another yard.

In September, 1962, after representations from the General Chairman of the Brotherhood of Railroad Trainmen, the general pattern was changed to provide employees required to report for duty at Winnipeg Union Depot with free transportation from Symington Yard to the Depot some 30 minutes prior to the actual time they were required to report for duty at that point. This was in order that such employees could leave their cars parked at Symington Yard where parking space and rented heater plugs were available to them. This was in lieu of the transportation which the company would normally have supplied back to the depot following the employees' arrival at and release from duty at Symington Yard. It was instituted solely as a convenience for the employees and as a direct result of their request.

Mr. Crump explained that in a large railway centre such as Winnipeg, where trains operate twenty-four hours a day, it is important that nothing stand in the way of a continuous flowing operation. It was for that reason transportation had been provided to employees under certain conditions.

Conductor Laningan and crew first filed a claim for payment for “deadheading” from Symington Yard (where they had parked their automobiles) to the Winnipeg Union Depot where they reported for duty. These claims were followed by others of similar content. Some claimed payment for time awaiting free transportation.

The crux of the Company’s position was that Symington is part of the Winnipeg terminal; that there is no provision in either of the relevant agreements providing for payment to employees for time involved in travelling between points within a terminal prior to reporting for duty or after release from duty.

Mr. Crump claimed it was not until the Statement of Issue was prepared that the “terminal Time Rule” entered the picture. It provides payment for crews switching or delayed at terminals when they are on duty. It was stressed that Paragraph 5, 6 and 8 of the Deadhead Rule make clear that terminal payments do not accrue to crews travelling between points within a terminal when they are not on duty.

A study of the Deadhead Rule convinces the Arbitrator its provisions clearly eliminate any necessity for payment to “deadhead” crews, under either rule, prior to the time they are required to report for duty or after they are released from duty at the end of a trip.

In other words, travelling between two points within a terminal when not on duty is not recognized as calling for payment under that rule.

This reduces the problem to the question of whether there is any obligation under the terms of the agreements for the Company to declare Symington a terminal. The Arbitrator is convinced the Rule relied upon by the Brotherhood was designed to deal with a situation other than that under consideration. The rule commences:

Conductors in unassigned service held at other than their home terminal longer than 16 hours without being called for duty, will be paid ...

It is when that occurs that paragraph four requires the naming of a home terminal. Paragraph four commences: “For the purpose of applying this rule..” which, of course is No. 4 alone.

The Arbitrator can find nothing in the applicable provisions of these agreements requiring payment either under the “dead rule” or the “terminal time rule” for employees not on duty. At the present time management has exercised its unhampered prerogative to designate Symington a yard within the Winnipeg terminal. For the application of the payment sought, there is nothing in the agreements requiring designation of it otherwise.

For these reasons this claim must be disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR