

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4

Heard at Montreal, Tuesday, July 6th, 1965

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim for payment on the basis of turn-around service by train crews switching the Goliad Oil & Gas Company spur.

JOINT STATEMENT OF ISSUE:

Goliad Spur is located one and one half miles north of Breton and 7.5 miles south of Warburg on the Hoadley Subdivision, Alberta.

The switch points are headed north on to Goliad Spur from the Main Track so that when switching is required on northward trips it is necessary to leave the train at Breton. Cars to be placed on Goliad Spur are run-around at Breton and pushed forward one and one half miles to the Spur and after switching is completed, cars brought out are run-around at Breton to place them behind the engine before coupling to the train and resuming the trip.

Train crews required to perform this service claimed payment for the actual three miles run from Breton to Goliad Spur and return plus time at the turnaround points. Breton and Goliad Spur. Payment of these claims is declined by the Company. The Brotherhood of Railroad Trainmen alleges that the Company, in declining these claims, has violated the provisions of Article 23 (a) (2) which reads:

Trainmen performing turnaround service within a trip, including back up movement into terminal because of locomotive failure, accident, stalling etc., will be paid for the actual miles run. The points between which turnaround service is performed or back up movement into terminal is made will be regarded as turnaround points and time at the turnaround points will be paid for in accordance with Article 11 Clause (f) Actual miles paid for will be added to the mileage of the trip and time paid for will be paid in addition to pay for the trip but will be deducted in computing overtime.

FOR THE EMPLOYEES:

(SGD.) S. MCDONALD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A M FRASER
GENERAL MANAGER, PACIFIC REGION

There appeared on behalf of the Company:

J. Ramage	– Assistant Manager, Labour Relations, Montreal
J. G. Benedetti	– Supervisor, Labour Relations, Vancouver
C. F. Parkinson	– Labour Relations Assistant, Montreal

There appeared on behalf of the Brotherhood:

S. McDonald	– General Chairman, Calgary
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 before him held in Montreal, Quebec, on July 6th, 1965, under the authority conferred upon him by the terms of the agreement between the parties dated January 7th, 1965.

Article 23(a) (2), under which this claim arises, reads:

Trainmen performing turnaround service within a trip, including back up movement into terminal because of locomotive failure, accident, stalling, etc., will be paid for the actual miles run. The points between which turnaround service is performed or back up movement into terminal is made will be regarded as turnaround points and time at the turnaround points will be paid for in accordance with Article 11 Clause (f). Actual miles paid for will be added to the mileage of the trip and time paid for will be paid in addition to pay for the trip but will be deducted in computing overtime.

Briefly, the issue is the refusal of the Company to recognize movements concerning the placing of cars on the spur of the Goliad Oil and Gas Company as coming within the meaning of the term "turn-around service within a trip", used in the foregoing article.

To place cars on this spur it is necessary to leave the train at Breton. The cars to be placed are then pushed forward for one and one half miles to the spur. After switching is completed, if cars are brought out they are brought back to Breton and placed behind the engine before coupling to the train and the trip is resumed. As indicated, the total mileage from Breton to the spur and return is three miles.

The Arbitrator had the benefit of a comprehensive review of the history of the existing provisions in briefs presented by the parties. Throughout the course of negotiations commencing in 1958 leading to a complete revision of the collective agreement finalized in April, 1963, the Brotherhood pressed for a provision that would clearly define this particular operation at Goliad as a turn-around movement. The Company maintained throughout that this operation was merely part of intermediate station switching. The Doubling Rule was finalized in its existing form and numbered Article 23, Clause (a).

One of the early submissions by the Trainmen in this respect was made in their doubling proposals in 1960. This included a clause reading:

When required to leave their train at a station in order to run to a point beyond the confines of the switching limits in order to perform switching service outside of such switching limits and return to their own train.

That submission was rejected by the Company. Needless to say, had it been accepted this problem would not exist. The Company continued to maintain such a rule had no relation whatever to doubling.

After many proposals were made by the Union, with counter proposals by the Company, one concession made by the latter during negotiations was agreeing to recognize doubling between stations because of handling tonnage in excess of "A" rating as turn-around service as distinguished from ordinary doubling in which case turn-around service is not paid. Following consideration of other proposals, the Company made a further concession by including a ten mile minimum for each doubling movement.

The final proposal made by the Union on March 29th was accepted by the Company. It was as contained in the pertinent section quoted.

The position taken by Mr. McDonald was that any movement requiring a crew to leave its train at a station and to proceed with the locomotive to a point beyond the station or yard limits for any reason and then return to pick up its train before proceeding, constitutes turn-around service which should be paid for under the provisions of the second paragraph of Article 23, Clause (a).

Conversely the Company's position is that movements concerned with the switching of industrial spurs do not constitute turn-around service and are specifically provided for in Article 13 of the agreement reading:

In all classes of road service, except Road Switcher and work train service, when engine is run more than one mile off main track, mileage or hours made, whichever is the greater, will be paid for in addition to pay for the trip and paid for at the rate of class of service performed.

A side trip on a branch line shown in the timetable as a subdivision does not constitute running off the main track.

Mr. McDonald submitted a list of seven detailed cases dealt with during a period between 1937 and 1961, all prior, of course, to the revision of the collective agreement, that he claimed established the Company's acceptance in similar circumstances of such claims.

Mr. McDonald urged these cases established the Company's acceptance of the principle he was putting forth. He also stressed that the provision in question had been submitted by the Brotherhood, feeling confident it covered the service in question in the manner they desired. He proposed it was not logical to believe they would offer a rule to deprive themselves of benefits that, as he claimed, had been established for several years.

Emphasis was placed by Mr. McDonald upon the fact that the distance between a station and intermediate point (in this case approximately one and a half miles) is not the basis for claims for performing turn-around service within a trip. Spur tracks, he claimed, have been constructed elsewhere at greater distance from the station than that between Breton and Goliad Spur. Where those are within the station yard limits any service performed is regarded as being within the confines of the station area and no claims for turnaround service have ever been submitted. The movement in this matter is one from a station to an intermediate point between stations, with a return to the originating station, he claimed.

Mr Ramage maintained the initial effort by the Brotherhood to have included in this section a provision reading "When required to leave their train at a station in order to run to a point beyond the confines of the switching limits in order to perform switching service outside of such switching limits and return to their own train" indicated the Union's awareness that such an operation could not be recognized within the established connotation of the terms "doubling" or "turn-around service". The former, he claimed, is applied to a situation where for a number of reasons it is necessary to take the train forward in more than one part. This may be due to handling tonnage in excess of the pulling capacity of the locomotive, unfavourable weather conditions, malfunction of a locomotive, a break in the train due to a break or failure in the coupling device or other reasons. "Turn-around service" is applied when the movement of the train is not direct from one end of the subdivision to the other. The train movement may be from the initial terminal to an intermediate station and then returning to the initial terminal. It applies within a trip to a movement where a train returned to a station it has already passed, reverses its direction at that station and again proceeds in its original direction to its destination.

In conclusion Mr Ramage gave examples of the ultimate that could be reached by accepting the Union's interpretation of the applicable provisions. One of these was that it would include the movement of a locomotive and part of a train beyond the outer main track switch where station limits exist in order to back into a second siding when the length of the train exceeds the capacity of one siding in order to permit another train to pass.

This reasoning emphasizes the determining importance of the purpose of the operation, to ascertain if the parties had specifically dealt with such an operation, over and beyond the general scope of Article 23 (a) (2).

A study of the agreement convinces the Arbitrator Article 13 was designed for the operation in question. The purpose of the deviation from the main course in this case is to perform a switching operation. To accomplish that purpose it is necessary for the engine to run more than one mile off the main track. While the switching does not commence until the spur is actually reached, the movement forward to it is a definite part of that operation. It is to be noted Article (13)(a), under the heading "Running off Main Track" is not limited in its scope by any qualifying restriction. The purpose is not specified. It says:

In all classes of road service, except Road Switcher and work train service, when engine is run more than one mile off main track, mileage or hours made, whichever is the greater, will be paid for in addition to pay for the trip and paid for at the rate of class of service performed.

In my opinion the Brotherhood recognized what would be necessary to include an operation of this type into the doubling provisions when they suggested this:

When required to leave their train at a station in order to run to a point beyond the confines of a switching limit in order to perform switching service outside of such switching limits and return to their own train.

Unfortunately for this claim, such a necessary provision for that purpose was rejected by the Company and remained outside the completed agreement. Before such a claim as this can be granted, future successful efforts in that regard are necessary.

For these reasons this claim must be disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR