CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 6

Heard at Montreal, Tuesday, July 6th, 1965

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim by the trainmen that a way freight assigned to run from Kerrobert to Macklin to Kerrobert to Wilkie on a continuous trip basis is an improper assignment.

JOINT STATEMENT OF ISSUE:

On April 29th, 1963, Bulletin No. 103 was posted reading as follows:

> Effective on arrival at Wilkie from Lloydminster Saturday, May 11th, Wilkie – Kerrobert – Lloydminster way freight – switcher assignment will be abolished. Applications will be received by Mr. T. Hall, Assistant Superintendent, Wilkie, up to 12.00K noon, May 11th, for one Conductor and two Trainmen for the following assignment:
>
> Wilkie to Kerrobert via Macklin Sub. Mondays.
>
> Kerrobert to Macklin to Kerrobert to Wilkie via Reford Sub. Tuesdays.
>
> Wilkie to Lloydminster via Furness Sub. 1st and 2nd Thursdays.
>
> Lloydminster to Wilkie. Fridays.
>
> Lloydminster to Hillmond and return. 1st and 2nd Fridays.

Conductor C. L. Henderson and crew were the senior applicants for this assignment and each Tuesday, the day the assignment was bulletined to run from Kerrobert to Macklin to Kerrobert to Wilkie, submitted a ticket claiming a separate trip from Kerrobert to Macklin and return to Kerrobert, a distance of 93 miles, and another ticket claiming another separate trip from Kerrobert to Wilkie, via Reford Subdivision, a distance of 43 miles.

Tickets were submitted claiming separate trips on May 14–21–28, June 4–11–18–25, July 2–9–16–23–30, August 6–13 and September 3rd, 1963, and all were reduced by a total of 64 miles on each date and payment allowed on the basis of a single trip from Kerrobert to Macklin to Kerrobert to Wilkie as shown in Bulletin No. 103.

The Brotherhood of Railroad Trainmen alleges that the Company in reducing these tickets has violated the provisions of Article 17, Clause (e) which reads:

> Except for Clauses (a), (c) (2), and (j) the provisions of Article 11 apply to way freight service.

FOR THE EMPLOYEES:	**FOR THE COMPANY:**
(SGD.) S. MCDONALD	**(SGD.) R. C. STEELE**
GENERAL CHAIRMAN	**GENERAL MANAGER**

There appeared on behalf of the Company:

C. F. Parkinson	– Labour Relations Assistant, Montreal
P. A. Maltby	– Supervisor, Labour Relations, Winnipeg

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 held before him in Montreal, Quebec, on July 6th, 1965, under the authority conferred by the terms of an agreement between the parties dated January 7th, 1965:

From comprehensive briefs presented by both parties this problem can be reduced to a question as to whether by issuing a bulletin, pursuant to Clause (a) of Article 42 of the collective agreement, covering assigned service, the Company can declare an objective terminal to be the final point of a continuous trip, when the trip actually involves leaving a terminal that may be called "A", proceeding to a point called "B", returning to Point "A" and then proceeding to Point "C" (The last point being declared the objective terminal in the bulletin) and to pay the crew involved on the basis of one continuous trip. The Brotherhood claims this should be considered two separate trips and paid accordingly. Mr. McDonald claimed Point "A" as being a home terminal, from which two distinct trips are made on the same day.

Clause (a) of Article 42 reads:

> Assignments, other than work train, will be bulletined specifying the home terminal, initial and objective terminal for each trip, territory over which assignment is to perform service.

The claim is concerned with a Tuesday trip commencing at Kerrobert. The train proceeds forty-six miles to Macklin, returns to Kerrobert and then proceeds forty-three miles via the Reford Subdivision to Wilkie. This represents a total of 136 road miles, the basis for payment by the Company. The trainmen contend the train crew is entitled to the basic day of 100 miles for that portion of the trip Kerrobert to Macklin and return and another basic day of 100 miles for that portion of the trip Kerrobert to Wilkie. The latter payment would involve being paid for 64 road miles not run.

Mr. McDonald told that prior to May 11, 1963, this assignment was covered by a bulletin reading:

Tuesdays – Kerrobert to Macklin and return

– Kerrobert to Wilkie – via Reford Subdivision.

At that time trip tickets had always been paid as submitted for two separate trips out of the initial terminal at Kerrobert.

Mr. McDonald claimed Article 17, Clause (e) is the only rule in the collective agreement permitting a crew to be used for more than one trip out of its initial terminal on a continuous time basis and that only applies for unassigned crews in turnaround service limited to the distances specified in the last paragraph of Article 11(c)(2). Further, that this provision specifically eliminates the rule applying to way-freight service.

Article 11(c)(1), it was urged, which applies to way-freight service, provides for a basic day of 100 miles or less, eight hours or less and that when trains are returned at intermediate points actual mileage both ways on round trips will be counted as mileage of the run.

The Arbitrator was told that in November 1962, a part of former Article 5, Clause (b) was deleted. It applied in all freight service and in all unassigned passenger and mixed train service, pusher and helper service. It read:

> a trip will automatically end on arrival at a terminal.

Article 11(c)(2) was substituted. The final paragraph of 11(c)(2) reads:

> A crew in unassigned service may be called to make more than one short trip and turn-around out of the same terminal and paid actual miles, with a minimum of 100 miles for a day provided (1) that the road miles of all trips do not exceed 120 miles, (2) that the road miles from the terminal to the turning point do not exceed 30 miles …

Mr. McDonald referred the Arbitrator to three decisions of the former Board of Adjustment he believed supported his reasoning.

For the Company Mr. Parkinson pointed first to what he described as an incorrect assumption in the Brotherhood's presentation, namely, that Kerrobert is the home terminal. He claimed it was Wilkie The weekly schedule commences on Monday from Wilkie, with Kerrobert the objective terminal; on the Tuesday trip Kerrobert

is the initial terminal and Wilkie the objective terminal. Thursday shows Wilkie as the initial terminal and Lloydminster the objective terminal. Under the bulletin the Company specifies what the initial and objective terminals of the assignment are for each trip.

With respect to Article 11(c)(1), Mr Parkinson stated the Trainmen maintained there was nothing in its terms permitting a wayfreight to be operated on a turnaround basis, back to its home terminal for that day and then run out of that same terminal on a straight-away trip on the basis of this being one continuous trip.

Further, that on Tuesday Kerrobert is the initial terminal and Wilkie the final terminal, a declaration made pursuant to the requirements of Article 42(a). Article 11, Clause (e) then provides that the "road miles will be the distance from the outer main track switch or designated point at the initial terminal to the outer main track switch or designated point at the final terminal." Consequently, when the initial terminal and the final terminal of each trip of an assignment has been bulletined in accord with Clause (a) of Article 42, Mr. Parkinson maintained, the road miles are to be paid accordingly.

Mr Parkinson told that prior to November, 1962, the agreement contained a rule providing for the automatic end of a trip on arrival at a terminal. This rule applied not only to unassigned freight service but to assigned freight service as well. Under that provision the Company would have had no choice but to agree with the present contention as to the Tuesday run. However, the automatic end of a trip rule which imposed such a penalty upon the Company was eliminated from the collective agreement; consequently, a trip no longer automatically ends on arrival at a terminal. As to the concession made in the last paragraph of Article 11(c)(2), Mr. Parkinson emphasized the restriction contained in it is only applicable to unassigned freight service and is in no way applicable to wayfreight service. This rule commences: "A crew in unassigned service …"

It is to be noted that in Article 42(a) a bulletin is contemplated not only when the particular trip leaves the home terminal, but also the initial terminal. It is required for each trip. Wilkie being the home terminal, it would require a special bulletin for the Tuesday run, when Kerrobert becomes the initial terminal, with Wilkie the objective terminal for that particular trip. Once the trip is bulletined, then Article 11, Clause (e), applicable to wayfreight service, comes into effect, when it states "road miles will be the distance from the outer main track switch or designated point at the initial terminal to the outer main track switch or designated point at the final terminal. Road time will commence when payment for initial terminal time stops and will end when payment for final terminal time begins."

A study of these submissions leads to the conclusion that the foundation for a successful decision in this claim was removed with the deletion of the automatic end of trip rule. Other language would be required to qualify the general scope of Clause (a) of Article 42. The parties would have to agree that the terms now used in that provision, requiring a bulletin specifying the initial and the objective terminals for each trip would not include a trip such as that under consideration, namely, going forward in one direction, reversing course back to the initial terminal and then going forward in another direction to the objective terminal. The mere description of what would be necessary brings into focus the negotiating task remaining.

It is not unusual to find provisions in a collective agreement designed for a general purpose that cannot by interpretation be adjusted to fit a special situation not specifically included. Under the terms binding this Arbitrator nothing can be added or subtracted from the collective agreement under consideration. That is why such agreements, as well as Acts of Legislatures, have to be constantly amended.

For these reasons this claim must be disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR