CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 20

Heard at Montreal, Monday, January 10th, 1966

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Conductor W.M. Manning and crew for payment of the difference between the miles claimed and the miles paid for service performed on snow plow train from Winnipeg to Gypsumville via Steep Rock January 23, 1964.

JOINT STATEMENT OF ISSUE:

On January 23, 1964 Conductor W.M. Manning and crew (Brakemen S.G. Browne and M.J. Linton) were ordered at Winnipeg (Symington Yard) for 5:00 K and operated a train in snow plow service from Winnipeg to Gypsumville via Steep Rock. The conductor and crew claimed payment for the service performed on the basis of two separate trips, namely one trip Winnipeg to Steep Rock and another trip Steep Rock to Gypsumville. Payment was made on the basis of one continuous trip Winnipeg to Gypsumville via Steep Rock. These employees subsequently submitted claims for payment of the difference between the miles claimed and the miles paid, on the grounds that in refusing payment on the basis of two separate trips the Company had violated Article 3, the first paragraph of Clause (c); Article 5, Rule (6) of the Conductors' Agreement and Article 3, the first paragraph of Clause (c) and Article 5 Rule 1 of the Trainmen's Agreement.

The Company declined payment of the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) H. C. WALSH	(SGD.) T. A. JOHNSTONE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

K. L. Crump	– Assistant Manager Labour Relations, Montreal
R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal
R. J. Wilson	– Senior Agreements Analyst, Montreal

And on behalf of the Brotherhood:

H. C. Walsh	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The road instructions received by Conductor Manning and crew for the trip in question read:

> Symington order snowplow extra to leave 5k Thursday 23rd with plow 55413 in service and bunk 68530. Conductor operate plow St. James to Steep Rock returning to Steep Rock Junction, thence Gypsumville as required by Roadmaster Boyczak or foreman in charge who will advise this office further requirements at Gypsumville. Joint. B-846.

The continuous trip from Winnipeg to Gypsumville via Steep Rock represented a total of 291 miles. Conductor Manning submitted a ticket for himself and crew claiming 142 road miles and 77 other miles for a total of 219 miles from Winnipeg to Steep Rock and a second ticket claiming 133 miles on the basis of 100 road miles "terminal to terminal" (Steep Rock to Gypsumville) and 33 other miles. The distance between these latter two points is 39 miles. A third ticket claiming a total of 171-1/4 miles for the return trip on the same day from Gypsumville to Winnipeg was paid and is not part of this dispute.

The crew was paid on the basis of 291 miles, on a continuous trip from Winnipeg to Gypsumville via Steep Rock. This represented a reduction of 61 miles claimed and represented the difference between the 100 miles claimed and 39 miles actually run between Steep Rock and Gypsumville.

For the claimants Mr. Walsh contended that in refusing payment on the basis of two separate trips the Company had violated Article 3, the first paragraph of Clause (c), Article 5, Rule (6) of the Conductors' Agreement and Article 3, the first paragraph of Clause (c) and Article 5, Rule 1 of the Trainmen's Agreement.

Article 3, Clause (c) on the first paragraph of the Conductors' Agreement and Article 3, Clause (c) of the 1st paragraph of the Trainmen's Schedule read as follows:

> Conductors/Trainmen on snow plow and flanger trains will be paid through freight rates.

For the Company Mr. St. Pierre maintained that all of Article 3, Clause (c), apart from outlining certain working conditions that apply when working with a snow plow or flanger, is concerned simply with the rate of pay to be paid conductors on snow plow and flanger trains. It was admitted this provision was applicable, but the contention was that nothing had been produced on behalf of the claimants that showed a violation of that section. The employees in question were paid through freight rates and also at the rate of 12-1/2 miles per hour for plowing side tracks.

Article 5, Rule (6) of the Conductors' Agreement and Article 5, Rule 1 of the Trainmen's Schedule read as follows:

> One hundred (100) miles or less, eight (8) hours or less to constitute a day in through and irregular freight, local freight and mixed train service.

Mr. Walsh contended that Steep Rock being a terminal, the trip from there to Gypsumville should have been paid for under the above provision.

Mr. St. Pierre described Article 5 (6) as a minimum payment rule, providing that for any completed trip or tour of duty the minimum compensation payable will be 100 miles or eight hours. He claimed the trip for which this crew was ordered on January 23, 1964, was from Winnipeg to Gypsumville via Steep Rock and the crew were paid greatly in excess of the minimum mileage called for by this Article. Mr. St. Pierre claimed nothing had been submitted by Mr. Walsh to establish that this rule had been violated. The amount paid this crew being much greater than the minimum required under Article 5, Rule (6), it could not possibly have any bearing upon the dispute.

To substantiate his argument Mr. Walsh referred the Arbitrator to Article 5, Rule 30 of the Trainmen's Schedule and Article 5, Rule 27 of the Conductors' Agreement, which he contended provided that crews on arrival at terminals have completed their trip and can immediately be called for another tour of duty as provided in Article 3, Clause (f), paragraph 1 Conductors' Agreement and Article 3 Clause (f) of the Trainmen's Schedule.

Article 5, Rule (27) reads:

> Conductors on arrival at terminals will not be called again for immediate duty if they want rest, the Conductors to be judge of their own condition, but eight hours is to be considered sufficient, except in extreme cases. Required rest must be booked on arrival, and will be given complete before being called. When a conductor books rest, his caboose will not be sent out until rest period

> has expired. Under the above provision, Conductors will not be permitted to book less than five (5) hours' rest.

Mr. St. Pierre answered this suggestion briefly by stating that Conductor Manning and his crew did not book any rest at Steep Rock and therefore the rule could play no part in this dispute. Further, he contended this rule does not afford conductors or crews the right to demand rest on arrival at a terminal other than their objective terminal and even then it applies only when they are released from duty. Crews are not permitted to take themselves off duty on arrival at the objective terminal if they have work to perform. In practice they are frequently required to perform switching service before being released from duty.

Under Rule (28) in Article 5, called the mandatory rest rule, conductors who have been on duty for 12 hours have the unqualified right to demand eight hours rest at any point.

Mr. St. Pierre contended, however, that Rule 28 makes no reference to the conductor or crew commencing a new day following the interruption of a trip by the booking of rest either on the road or at a terminal.

Mr. Walsh referred the Arbitrator to five instances between 1960 and 1964 where the Company had paid what he stated were similar claims.

Mr. Walsh also placed reliance upon a decision by the former Board of Adjustment in Case 596, where he claimed the question for determination was based upon application of the Rules he had quoted. Those claims were allowed.

Mr. St. Pierre countered with [Board of Adjustment] **Case No. 436**, heard by the same authority, in which he claimed a similar claim, involving exactly the same principle, was disallowed.

Mr. St. Pierre further contended that the agreement under which the Board of Adjustment operated differed from that binding the Arbitrator in that it was unnecessary for them to give reasons for their decisions. Thus, no analysis or reference to specific terms of the collective agreement was necessary.

Answering the Brotherhood's claim that the Company could not operate a crew from one terminal through a second terminal to a third unless payment is made on the basis that a trip was completed on arrival at the second terminal, Mr. St. Pierre made reference to the fact that prior to the 1961-62 contract negotiations on the Canadian Pacific Railway the agreement with the Brotherhood on the Prairie and Pacific Regions of the Company contained Article 5 (b) reading:

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

Following the recommendation of a Conciliation Board that this so called "automatic release" rule be eliminated the Canadian Pacific was successful in removing the rule from the agreement.

Mr. St. Pierre contended this would be the type of provision necessary for the Brotherhood to succeed in this claim. However, such a rule had never prevailed in any agreement between these parties.

The crux of Mr. St. Pierre's argument was that the Brotherhood was unable to point to any single provision or combination of provisions in its collective agreement with the Company that would justify the position taken, namely, that when this crew left Steep Rock they were entitled to commence a new day with a minimum payment of 100 miles, simply because Steep Rock is a terminal. The distance between Steep Rock and Gypsumville is 39 miles.

Dealing with the fact that similar claims have been paid on occasions, Mr. St. Pierre stated it to be doubtful if any of them would have been paid had the Brotherhood been compelled in the past to demonstrate that a rule in its collective agreement had been violated. Because the regulation governing the former Canadian Railway Board of Adjustment did not require that the Brotherhood demonstrate any contract violation, supervisors from time to time concluded that it would be easier to pay.

A study of the provisions in the rules relied upon by the Brotherhood, as applied to the facts disclosed, shows that the claimants were paid through freight rates, as required by Article 3, Clause (c); that the provisions of Article 5, Rule (6) requiring a minimum payment on the basis of one hundred miles or less, or eight hours or less, was complied with, the claimants being paid much in excess of that requirement.

As to the claim that Article 5, Rule (30) of the Trainman's Schedule (Article 5, Rule 27 of the Conductors Agreement) contributed to the argument for the claimants, I am convinced much would have to be read into this Article that has not yet been negotiated in order to support this claim. Its purpose is to provide, not for additional

payment, but to protect employees from too lengthy periods of employment. It would not matter, having regard to the language used, “Conductors on arrival at terminals” whether this was the first, second or third terminal on their trip. Weariness is the matter of determining importance.

From a thorough study of the provisions relied upon by the Brotherhood, I am convinced none contains what would be required to allow this claim. It must therefore be disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR