

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 47

Heard at Montreal, Monday, September 12th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Conductor R.M. Scott and crew, Brandon, Manitoba, for two hours time at Moosomin while handling auxiliary train, October 1, 1965.

JOINT STATEMENT OF ISSUE:

Conductor Scott and crew were ordered at Brandon for auxiliary service for the purpose of rerailling equipment at Red Jacket. The auxiliary was stopped at Moosomin when it was found it would not be required at Red Jack. Crew was held at Moosomin for two hours during which time the auxiliary equipment was switched for return movement to Brandon.

Conductor Scott and crew were paid for initial time at Brandon, actual miles Brandon to Moosomin and return and final time at Brandon in accordance with article 20, clause (b), on the basis the service performed was work train service.

Claim was submitted for payment of the time at Moosomin in accordance with article 11, clause (c)(1), first paragraph, and article 11(f)(1), on the basis through freight rates and conditions applied to the service performed. Payment of this claim is declined by the Company.

FOR THE EMPLOYEES:

(SGD.) S. M. MCDONALD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. C. STEELE
GENERAL MANAGER

There appeared on behalf of the Company:

P. A. Maltby – Supervisor, Labour Relations, Winnipeg

And on Behalf of the Brotherhood:

S. McDonald – General Chairman, Calgary

AWARD OF THE ARBITRATOR

It was established this crew were first out in unassigned pool freight service at Brandon when called to take an auxiliary train westward from that point to Red Jacket, to assist in rerailling equipment of Train No. 1 "The Canadian". This train was intercepted at Moosomin, 7.2 miles from the scene of the derailment, however, because a second crew had been ordered eastward to Red Jacket in similar service. They had arrived first and proceeded to reraill Train No. 1.

The nub of the argument advanced for the employees by the representative of the Brotherhood was that because the crew had not actually engaged in wrecking train service at the scene of the derailment, they should have been paid on the basis of through freight service. In other words, the basis for the assignment is not to be the criterion, but the actual service performed.

Article 20(c) of the agreement specifies, in part:

Work service under the meaning of this article is service performed in connection with ...
wrecking train service ...

In support of this claim the third paragraph of clause (b) of this article was also relied upon, established what is meant by running miles to and from work and what are work points. It states:

Such working points are the respective locations where maintenance or betterment work, wrecking train, snowplowing or spreader service is being or is to be performed on the company's facilities or right of way.

The representative of the Brotherhood emphasized that it is wrecking train service that comes within the scope of work train service, not the mere handling of an auxiliary from one point to another when no wrecking train service is performed.

The representative for the Company claimed that crews assigned to work train service and unassigned crews ordered for and used exclusively in work train service are in work train service from the time ordered until laid up.

In support of this reasoning clause (f) of article 20 was indicated. It reads:

When an unassigned crew is used in work train service the crew will be paid work train rates and under work train conditions.

But one qualification as to the handling of work train equipment appears in this article. It is the fourth paragraph of clause (f), reading:

Should the crew be required to handle revenue freight cars other than those required to be moved in connection with the work service being performed, the first paragraph of this clause will not apply. In such event the crew will be regarded as performing work train service enroute and under through freight conditions.

In the opinion of the Arbitrator this particular crew was used in work train service on the occasion in question. Something in addition to the fourth paragraph quoted would be necessary to support the claim made that although ordered out on exclusive work train service, because the trip was not completed at the point of original destination and used at the scene, the handling of this equipment enroute automatically turns into through freight service. No meeting of the minds of the parties to the agreement on such a result is indicated in the existing provisions.

For these reasons this application is denied.

(signed) J. A. HANRAHAN
ARBITRATOR