

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 51

Heard at Montreal, Monday, February 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for 100 miles submitted by Locomotive Engineer J.W. MacDonald for setting out a caboose from his train on arrival at Halifax, March 4, 1966.

JOINT STATEMENT OF ISSUE:

On arrival at Halifax March 4, 1966 on train No. 406 Engineer J.W. MacDonald while yarding his train was required to set out a deadhead caboose from behind 13 cars in his own train. After performing this work he subsequently submitted a claim for 100 miles for setting out the caboose. The Company has refused to pay the claim. The Brotherhood contends that this is in Violation of article 7-G of the collective agreement.

FOR THE EMPLOYEES:

(SGD.) D. E. McAVOY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. A. Cocquyt – Labour Relations Assistant, Montreal
D. C. Fraleigh – Senior Agreements Analyst, Montreal

And on behalf of the Brotherhood:

D. E. McAvoy – General Chairman, Montreal
W. J. Wright – Assistant Grand Chief Engineer, Montreal
E. J. Davies – General Chairman, Aurora
G. A. Sutherland – Vice-Chairman, Montreal

AWARD OF THE ARBITRATOR

There was no dispute that during the movement of Train No 406 between Moncton and Halifax on March 4th, 1966, cars were added to the train at Truro, including a deadhead caboose for furtherance to Halifax. There were 95 cars when this train left Truro.

The deadhead caboose was the 14th car in the train and was occupied by a Truro train crew being deadheaded to Halifax to work on a west bound freight train out of that point. They were to take the place of the train crew that normally would have been available to man the west bound freight out of Halifax but who had booked rest at that point.

The train which the Company wanted moved out of Halifax had 111 empty cars that were said to be urgently required west of Halifax for loading. Further importance was attached to the expedited departure of this train due to a congestion of empties in the yard at the time.

When train 406 arrived at Rockingham Yard in Halifax, it headed into track H-13, which holds 55 cars; the train then partially pulled through track H-13 leaving the 45 rear cars and the working caboose on that track; the remaining cars along with the deadhead caboose were backed into track H-12 where 37 cars were left with the deadhead caboose first out, the 13 remaining cars were backed into track H-11. These three tracks are adjacent to one another.

This train arrived at the outer switch of Rockingham Yard at 1.40 p.m. completed yarding at 2.15 p.m. The locomotive arrived on the shop track at 2.25 p.m. and Engineman MacDonald booked off duty at 2.40 p.m. The total time between 1.40 p.m. and 2.40 p.m. was paid for as terminal detention.

The westbound freight train with 111 empties was awaiting the arrival of train No. 406 with the deadhead caboose and the other train crew. This train had already been inspected and tested. Immediately the deadhead caboose was available on track H-12, it was placed on the waiting train by a yard crew. Following a brake test required under regulations the west bound train left Rockingham at 2.40 p.m.

The representative for the Brotherhood told that prior to April 2, 1962, engineers were not required to do any switching in connection with their trains, other than putting them away.

As revised 1962 – article 7-G reads:

Engineers on arrival at objective terminal after performing switching required in connection with their own train and putting their train away (including caboose) will be considered released from duty. Should they be required to perform other work when yard engines are on duty or to make short runs out of the terminals they will be paid one hundred (100) miles for such service. It is understood that where no yard engine is on duty road engineers will do yard switching and will be considered as in continuous service.

It was said before agreeing to this provision being included in the agreement the Brotherhood required assurance from the Company that there would be “no abuse of article 7-G of the working agreement”. This was said to have been obtained from Vice-President MacMillan, in a letter dated April 11, 1962 reading, in part:

As a result of our discussion I undertook to write you a letter outlining what our practice had been in Western Canada insofar as it applied to article 5 and 7G in the East.

Under these rules, at terminals where yard engines are on duty, road engineers may be used to set off and if necessary spot important cars or bad order cars from their own train. They may also be required to switch and pick up equipment for movement in their train and, of course, switch and re-spot other equipment where necessary to accomplish this work. In some instances it may be necessary for them to put their caboose away. In addition, the engineman will put his own train away in a minimum number of tracks.

For the Brotherhood it was contended the words in this letter “In addition the engineman will put his own train away in a minimum number of tracks” had an important bearing on what occurred on the date in question. It was claimed the minimum number of tracks to yard this train was two, but due to switching out the deadhead caboose, it took three. Switch engines were on duty on that date.

It was also claimed that the deadhead caboose which was switched out by Mr. MacDonald had no importance attached to it and was not the “caboose on their own train” as mentioned in the vice-president’s letter.

For the Company it was contended that the revised article 7-G permitted the Company to use road engineers on arrival at their objective terminal to perform necessary switching in connection with their own train and to put their own train away, even though yard engines might be on duty at the time.

This, of course, is borne out by the language used in article 7-G.

The Arbitrator’s attention was directed to that portion of Mr. MacMillan’s letter referring to spotting important cars from their own trains as one of the duties to be required of road engineers. It was said the Company considered the immediate availability of the deadhead caboose and crew from Truro at Halifax at the time in question brought it entirely within that portion of the letter.

It was emphasized that the engineer in question was not asked to spot this important car. In the Company’s view he could have been required to place the Truro deadhead caboose on the waiting westbound freight train. Instead the caboose was simply left first out attached to a cut of cars in track H-12 and a yard crew placed it on the waiting westbound freight train.

It was admitted that in other circumstances this train could have been yarded in two tracks. However, because of the importance attached to the deadhead Truro caboose the train was yarded in three tracks which only required from five to ten minutes additional compensated service from Engineer MacDonald.

For the Company it was argued that Arbitration **Case No. 11** had interpreted similar language used in article 140 of the B.R.T. Western Agreement. That judgement contained this finding:

Who has the right to ‘require’ trainmen to do such work in connection with their own trains? Obviously, unless the agreement curtails that right, and it does not, it would be management. Therefore, whatever switching, transferring and industrial work required by management of trainmen in connection with the train for which they are the crew must be done by them. ...

Further, it was held: “The term ‘minimum number of tracks’ must remain a matter for determination by management in pursuance of their obligation to carry on an efficient operation”.

On the facts described it is clear the service performed on the date in question was switching in connection with the train in question and putting that train away in accord with the first sentence of article 7-G. Again it is to be emphasized, as it was in **Case No. 11**, the “switching required” in this operation remains a matter for Company determination. No negotiated limit has been placed upon that requirement, bearing in mind “it is done in connection with their own train”.

This finding makes it unnecessary to deal with the question of the caboose being an “important car”. What occurred here was hardly the “spotting of an important car” in the sense that it was dealt with alone. It was part of the general switching required in connection with the train itself apart from the convenience resulting for the despatch of the waiting train.

Fear was expressed by the Brotherhood that a ruling of this nature would open the provisions of 7-G to the abuses feared when the assurance was obtained from the Vice-President. It should be needless to emphasize that each set of circumstances must be passed upon in relation to the language used in this provision.

In the circumstances described, this claim must be denied.

(signed) J. A. HANRAHAN
ARBITRATOR