

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 70

Heard at Montreal, Monday, May 8th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Conductor E.A. Milton for way freight rate of pay, Passenger Train No. 104, Saskatoon to Melville, February 18, 22, 24 and 26, 1966.

JOINT STATEMENT OF ISSUE:

On February 18, 22, 24 and 26, 1966, Passenger Train No. 104 was operated Saskatoon to Melville in charge of Conductor E.A. Milton. On these dates Train 104. handled certain consignments which had originated as L.C.L. (less than carload) freight and were subsequently turned over to the CN Express Department for shipment as express traffic from Saskatoon to destination. In each instance Form CNE-5263 was issued at Saskatoon and attached to the freight waybill. Conductor Milton submitted time returns claiming the way freight rate of pay on the dates mentioned and the Company allowed payment on the basis of the passenger rate of pay.

Conductor Milton subsequently submitted claims for the difference between the passenger rate paid and the way freight rate claimed. Payment of these claims was declined by the Company and the Brotherhood alleges that, in refusing to make payment, the Company violated article 5, rule (7) of the conductors' agreement.

FOR THE EMPLOYEES:

(SGD.) H. C. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

- R. St. Pierre – Labour Relations Assistant, Montreal
- A. D. Andrew – Senior Agreements Analyst, Montreal
- A. J. DelTorto – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

- H. C. Walsh – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement of Issue for each date mentioned therein, Conductor Milton submitted a time return claiming way freight rate of pay for the entire trip on the grounds that the traffic unloaded from the express car at various stations en route was way freight. The Company paid at the passenger rate of pay.

The facts established that “way freight” is the term traditionally applied to less than carload (L.C.L.) freight service. It was said this type of traffic is generally moved on way freight or mixed trains. The way freight rate of pay is greater than the passenger or through freight rate.

The representative for the Brotherhood claimed that the manner in which payment was made in this instance represented a violation of article 5, rule 7, 2nd paragraph of the conductor’s agreement and the equivalent rule of the trainmen’s schedule, both reading as follows:

Conductors will be paid way freight rates over the full trip if they load or unload way freight or switch at three (3) or more points, or a combination of three (3) of both.

It was claimed for the Brotherhood that the use of CNE Form 5263, which was used on the shipments in question, was thought by the Company as sufficient to change freight shipments to express shipments.

While admitting that **Case 790** of the Canadian Railway Board of Adjustment No. 1, that involved a similar changing of L.C.L. freight into express shipments, had found against the Brotherhood, its representative claimed this decision was rendered without reasons being issued. It was suggested a comparison should be made with **Case No. 765**, a decision by Professor Bora Laskin, as he then was, wherein explicit reasons were given for a contrary decision that involved, it was claimed, a similar principle.

The Company gave a comprehensive review of the different methods of handling freight on passenger trains. On occasion, where warranted by the volume of way freight traffic the Company places a car or cars on a passenger train for the purpose of handling this traffic. Such is known as an L.C.L. car and is manned by one or two employees who are known as L.C.L. Freight Handlers on Passenger Trains. These employees are represented by the Brotherhood of Railroad Trainmen and are covered by a separate collective agreement.

A passenger train may also have an express car, in charge of an express messenger, who is responsible for the handling of express traffic. His position is covered by an agreement with the Canadian Brotherhood of Railway, Transport and General Workers.

It was claimed for the Company that a conductor of a passenger train on which express and/or less than carload freight (way freight) is loaded and/or unloaded en route has always been paid only the normal passenger rate of pay as he is not required to assume any responsibility in respect to such shipments.

The Company described how the decline in traffic in less than carload express and way freight traffic came about through competition due to the construction of highways and other modes of transport. This necessitated various reductions in the service provided on some portions of the railway. Way freight trains that once operated daily now operate only two or four days per week or have been removed entirely.

As a consequence, when wayfreight traffic is on hand at a station and way freight service is not immediately available, the traffic is often turned over to the Express Department for handling, if such action will reduce or avoid delay. When this occurs a form CNE-5263 is issued and attached to the freight waybill and both documents accompany the shipment to the destination. The traffic is forwarded as express and while in transit is in the care of an express messenger if handled in an express car, or a train baggageman paid an express allowance if handled in a baggage car. In either case the Express Department assumes the cost of the service performed. The revenue for such shipments is pro-rated to the Railway’s freight revenue accounts for the portion of the handling that was L.C.L. freight and to express revenue accounts for the portion of the handling that was performed by the Express Department.

The basic contention made by the representative for the Company was that article 5, rule (7) simply provides for payment – nothing more, nothing less. It in no way restricts the Company from changing a freight consignment to express or reshipping it by express, truck or any other means.

I have carefully studied the able judgement of the eminent Arbitrator in **Case No. 765**, but find it in no way assists me in interpreting the language used by these parties in article 5, rule (7) in the particular circumstances. The problem dealt with in that judgement was quite different.

It was established that the traffic handled on the train in question on the dates described was moved in an express car accompanied by Express Department Form CNE-5263 and in charge of an express messenger who was responsible for the handling of the traffic. There can be no question but that they were not way freight as contended, but were express shipments.

In order for this claim to succeed there would have to be a provision in the conductors' agreement for additional payment to a passenger train conductor for assisting an express messenger or baggagemen in the loading or unloading of express traffic that has been converted from a freight consignment. This does not appear.

The plain wording of the provision relied upon indicates that conductors will be paid way freight rates over the full trip if they load or unload way freight.

There is nothing in that provision that restricts the Company from deciding, in the interest of a more efficient operation, to facilitate shipment of material commencing as L.C.L. way freight by converting it into an express shipment. Such a restriction remains a matter for possible future negotiation.

For these reasons the contention of the Brotherhood cannot be sustained.

(signed) J. A HANRAHAN
ARBITRATOR