

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 95

Heard at Montreal, Tuesday, November 14th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Yard Foreman W. Gill and Helper D. Richardson for 3 hours pay which would have been the time the crew would have worked prior to the 12 o'clock strike deadline set by the Brotherhood of Railroad Trainmen on August 26th, 1966.

JOINT STATEMENT OF ISSUE:

Foreman W. Gill and Helper D. Richardson were regularly assigned in yard service at Yarmouth, N.S. the bulletined starting time of their assignment being 9 a.m. There is no locomotive stationed at Yarmouth, the assignment being worked with a locomotive off road assignment No. 25. On August 26th, the road assignment was not operated because of the impending strike and as it was known there would be no locomotive available to work Yarmouth Yard, the yard assignment was cancelled. A claim was submitted by the Brotherhood under the provisions of article 42, rule 17(a) of the collective agreement covering Yard Foremen and Helpers. The claim was denied by the Company.

FOR THE EMPLOYEES:

(SGD.) J. I. HARRIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. M. HAND
GENERAL MANAGER, ATLANTIC REGION

There appeared on behalf of the Company:

R. Colosimo – Supervisor Personnel & Labour Relations, Montreal

And on behalf of the Brotherhood:

J. I. Harris – General Chairman, Montreal

L. Safnuk – Vice-General Chairman, Sudbury

AWARD OF THE ARBITRATOR

This claim is based primarily under the provisions in yard rule 17, clause (a) of the agreement, reading in part:

17 (a) Regularly assigned yardmen who do not lay off of their own accord will be paid not less than the number of days in the month, less the bulletined days off of the assignment and statutory holidays, or their proportion thereof when an assignment is created or discontinued ...

Foreman W. Gill and Helper D. Richardson were regularly assigned in yard service at Yarmouth, N.S. Monday to Friday, the bulletined starting time of their assignment being 9:00 a.m.

When the report of a Board of Conciliation was issued on August 9th, 1966, its recommendations were not accepted by the Brotherhood, who under date of August 22, 1966, advised the Company a strike had been called for August 26th, at 12:00 noon, Standard Time.

There was no dispute that there is no locomotive stationed at Yarmouth, the yard assignment being worked with a unit off a road assignment originating at Halifax. Because of the pending strike this equipment was stored at Kentville. The run from Halifax to Yarmouth ordinarily takes twelve hours. There would be a return to Kentville, a distance of 120 miles for the purpose of storage.

For the Brotherhood it was contended that rule 2, clause (a) provides that eight hours or less shall constitute a day's work.

While pointing out that despite the fact that rule 2(a) and rule 17(a) provide payment of not less than a minimum day's pay for each day an assignment is bulletined to work, whether worked or cancelled, the Brotherhood claimed that when handling this claim with the Company it took into consideration the fact that the strike did take effect at 12:00 noon, therefore, they reduced the claim accordingly and claimed only three hours, representing the time the crew would have worked had they been used.

It was feared by the Brotherhood that a decision holding that lack of power would justify cancellation of assignment and the protection these employees have in the rules described would have the result of breaking "a life long yard guarantee".

The main thrust of the argument for the Company was the provisions of article 42, rule 17, clause (a) did not contemplate payment or a guarantee under conditions brought about by action on the part of the Brotherhood itself.

Important to this decision are the words in yard rule 17, clause (a) reading "... who do not lay off of their own accord ...".

Of further importance is the provision in rule 1, clause (e) which reads:

All regular or regular relief assignments for yard service employees shall be for five consecutive days per work week of not less than eight consecutive hours per day, except as otherwise provided in this agreement.

It is clear that on this occasion these employees were not available for work on the day in question for eight consecutive hours, because they had "laid off of their own accord".

Clearly the Company wanted them to work. The fact that there was no equipment was, I am satisfied, directly due to the action of the strike. As indicated in Case No. 94, this is a consequence of a strike, no matter how justified it may be, that must be considered before and understood after it is held.

With respect to the fear expressed that this finding would open the door to a possible circumvention of the guarantee rule, it must be clear it is based solely upon the situation brought about by the employees stopping work.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR