

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 96

Heard at Montreal, Monday, December 11th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Engineer W. Has account allegedly run-around by Engineer J.S. Stevenson, at Sutherland, Sask., April 12, 1967.

JOINT STATEMENT OF ISSUE:

On April 12, 1967, Engineer Stevenson operated in short turnaround service on a continuous tour of duty from Sutherland, the home terminal for engineers in pool service, west to Mileage 16.4 Wilkie Sub., thence easterly through Sutherland to Mileage 97.1 Sutherland Sub., after which he ran to Sutherland where he was released from duty.

When Engineer Stevenson operated through Sutherland, en route from Mileage 16.4 Wilkie Sub., to Mileage 97.1 Sutherland Sub., Engineer Has stood first out in the engineers' pool. He submitted claim for payment of a run-around which was declined by the Company. The Brotherhood of Locomotive Engineers alleges the claim is in order under the provisions of article 26, clauses (a) and (b), of the collective agreement.

FOR THE EMPLOYEES:

(SGD.) A. C. DOULL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. C. STEELE
GENERAL MANAGER

There appeared on behalf of the Company:

- P. A. Maltby – Supervisor Personnel & Labour Relations, Winnipeg
- C. F. Parkinson – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

- A. C. Doull – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

It was established that a single engineers' pool is maintained at Sutherland to protect unassigned service on the Wilkie subdivision, which is westward from Sutherland to Wilkie and on the Sutherland subdivision, which is eastward from Sutherland to Wynyard.

It was stated by the representative for the Brotherhood that due to Wilkie and Sutherland Subdivisions being shorter than the usual average and the traffic pattern prevailing at the time, the operation of two separate pools previously operated proved unsatisfactory to both the Company and the men. By mutual agreement one pool was established to work in turn, either one or the other of what was described as "these two subdivisions".

On the morning in question the four leading engineers on the list, went in different directions, the first travelling east, the third west and the fourth east.

Engineer Stevenson, second on the list was ordered for, and operated on short turn-around service out of Sutherland. It was the initial point. He was ordered for 6:00k and departed from the outer main track switch at 6:30k. He ran west a distance of 16.4 miles and then returned to Sutherland, from which point he departed at 10:55K and ran east for a distance of 12.6 miles, where he returned to Sutherland.

When Engineer Stevenson returned to Sutherland at 10:00k, Engineer Has stood first out on the list and, according to the claim, should have been assigned to the run eastward. This would be in accordance, it was submitted, with article 26(a) reading:

26 (a) Pooled engineers will run first in first out, except as otherwise provided.

The exception was said to refer to article 26(j), providing that under the circumstances outlined therein a pool engineer may be run around without penalty to the Company.

In addition to article 26 (a), the Brotherhood's representative emphasized article 26 (i), reading:

26 (i) Engineer will not be run off subdivision to which he is assigned except in traffic emergency and then only for one trip.

Thus, it was claimed, when Engineer Stevenson finished his work on the Wilkie Subdivision and was run through his home terminal to work on the Sutherland Subdivision, it was a violation of article 26(i).

Pointing to the fact that all road work is subject to terminal rights and that a subdivision is the trackage between two terminals, the Brotherhood suggested the Company's recognition of the necessity for a special provision to permit a run-through of a terminal, was indicated by the negotiation and inclusion of article 7, clause (e), providing in part, "Engineers assigned to such Road Switcher Service will perform all service required and may be run in and out and through their regular assigned terminals, without regard for rules, defining completion of trips ..."

For the Company it was claimed that the operation in question came within the provisions of article 2, clause (d) of the collective agreement, reading in part:

2 (d) In short turn-around service between terminals and turn-around points, miles and junction switching combined or hours, whichever is the greater, will be paid on each leg of the run; all time from arrival at turn-around point to departure and all time at final terminals, from the time of making the first stop until 15 minutes after the engine is placed on shop track will be paid on the minute basis. A minimum of 100 miles will be allowed.

All time at terminals before commencement of trip will be paid, in addition to the guaranteed mileage. Engineer will not be used out of initial point after completing a day of 100 miles or after having been on duty eight hours computed from the time of departure from the outer main track switch or designated point on the initial trip, except as a new day.

It was submitted for the Company that this provision contains no restriction as to the number of turn-around trips that may be made, nor is there any restriction in respect of direction of the movements out of the initial point. The only restriction, it was claimed, is that an engineer will not be used out of the initial point after completing a day of 100 miles or having been on duty 8 hours. It was reasoned that this indicated an engineer in short turn-around service who has not completed a day of 100 miles or been on duty eight hours can be used out of the initial point on a subsequent trip, or trips, in a continuous tour of duty.

Section 26 (h) is mentioned in the claim. It reads:

26 (h) The Master Mechanic with Engineers' Committee will decide which subdivision will be considered preference out of their respective stations.

It was agreed by the Brotherhood's representative that while there had not been a formal compliance with this requirement, no claim was being made that the validity of the mutual agreement as to one pool was an element bearing on this determination.

In my opinion this reduces the question to be answered to whether what occurred in this instance can be said to be in violation of article 26(i).

The representative for the Company maintained the distinction to be drawn in that regard is that the work in question was not "assigned"; that this term has application only to a successful bid for a bulletined assignment. The work in question was actually done by those in "unassigned service".

Article 26(f)(1) indicates the significance of an "assignment". It reads, in part:

26 (f) (1) At the general change of timetable all assignments will be bulletined on the seniority district. Senior engineers shall have preference in all classes of service at any station to which his seniority entitles him and must stay on the run chosen throughout the period the timetable is in effect ...

It follows that if in fact article 26(i) has reference only to engineers on assigned runs, its protective value would not extend to those in unassigned service. The concluding words of that provision, "... and then only for one trip", in my opinion lends strength to the reasoning that maintaining the pattern of the bulletined assignment of an engineer on a particular subdivision is what is contemplated by its terms.

That being so, it would be necessary to find in the collective agreement a similar provision having application to those in unassigned service. A thorough search discloses no such specific provision.

If article 26(i) had been found to be applicable to the circumstance under consideration, it is important to note this wording in it "... and then only for one trip". That, of course, is all that occurred on this occasion.

The third paragraph of article 2, clause (d) of the collective agreement provided for Engineer Stevenson the protection that after completing a day of 100 miles or after having been on duty eight hours, computed from the time of departure from the outer main track switch or designated point on the initial trip, he could not be used out of the initial point, except on a new day. With no other protective provision his entitlement for that distance or period of time would be superior to any claim Engineer Has had at the time in question.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR