

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 113

Heard at Montreal, Tuesday, June 11th, 1968

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Conductor H. Hernden and crew for a minimum day and, in addition, final terminal time at Hawk Junction, December 3, 1967.

JOINT STATEMENT OF ISSUE:

December 3, 1967, Conductor H. Hernden and crew were ordered at Hawk Junction for 12:01 p.m. to perform work in connection with derailment at Limer, approximately eight miles south of Hawk Junction.

This crew assisted at derailment and made two trips to Hawk Junction with cars from derailed train. On arrival back at Hawk Junction after the second trip at 2:45 p.m., they performed switching to expedite restoration of rail service and were off duty at 4:40 p.m.

This claim was submitted by Conductor Hernden and crew for a "minimum day and, in addition, final terminal time at Hawk Junction. The Company declined payment of the final terminal time and the Organization alleges that, in refusing to make payment, the Company violated Article 10 (b) of the Collective Agreement.

FOR THE EMPLOYEES:

(Sgd.) C. E. McCLELLAND
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) J. A. THOMPSON
VICE-PRESIDENT – RAIL OPERATIONS

There appeared on behalf of the Company:

H. R. Wootton – Manager Rail Operations, Sault Ste. Marie
R. H. Rankin – Superintendent, Sault Ste. Marie

And on behalf of the Brotherhood:

C. E. McClelland – General Chairman, Sault Ste. Marie,

AWARD OF THE ARBITRATOR

The second paragraph of the Joint Statement of Issue, read:

This crew assisted at derailment and made two trips to Hawk Junction with cars from derailed train. On arrival back at Hawk Junction after the second trip at 2:45 p.m., they performed switching to expedite restoration of rail service and were off duty at 4:40 p.m.

However, it was claimed by the Brotherhood that this crew handled revenue freight cars, Limer to Hawk Junction, and did yard switching at Hawk Junction on completion of their second trip to Limer. It was stated this crew should not be considered as working on a work train, just because they had a work order; that all Road Switcher crews working on the Michipicoten Subdivision out of Hawk Junction run on work orders and they are not work trains.

It was submitted that Mr. J.A. Thompson, Vice President of Rail Operations, in his letter of April 19, 1967, stated:

I have never considered that the form of order in use by trains had any bearing on the class of service being performed

Again, a letter from Mr. H.R. Wootton, Manager of Rail Operations, in a letter of April 6, 1967, stated: "... does not change the class of service in which train crews are engaged."

It was disclosed that on December 3, 1967, regular Freight Train 2/12 handling 50 loads and three empties enroute from Hawk Junction to Steelton derailed at Limer, Ontario at 12:05 a.m. Twelve cars were derailed and the main Track and siding damaged for about six rail lengths, preventing passage of train for approximately 27 hours.

An auxiliary wrecking train manned by a Soo Subdivision pool freight crew was ordered at Steelton and arrived at the scene of the derailment at 3:00 p.m. to work at the south end of the derailment.

It was stated that conditions existing at the derailment necessitated before traffic could be restored, wrecking service from the north end, as wrecking hoist equipment was available at the south end only. It was for this purpose, it was said, that Conductor Hernden and crew were ordered and utilized.

The grievors, in pool freight service, laying over at their away-from-home terminal (Hawk Junction), and being the only Soo Subdivision crew available or duty, were ordered for 12:01 p.m. to perform work in connection with the derailment at Limer, which is approximately eight miles south of Hawk Junction.

The original Order received at Hawk Junction from the Agent at Steelton read:

Order No. 10's crew for 12:01 p.m. to go to Limer and work on derailment. He is to handle tractor car and van with 2 units.

The Order handed this crew read:

Handle OCS tractor to Limer behind your units and work at derailment as directed by Supervisor in charge.

It was stated by the Company's representative that in pursuance of that order this crew handled three cars from the derailed train to Hawk Junction, then returned to Limer where they rerailed a car of pulpwood, completing their work at that point. Then they returned with same to Hawk Junction, arriving at 2:45 p.m., where they were required to expedite restoration of rail service, by performing switching.

Conductor H. Hernden and crew, who were on duty a total of 5 hours and 10 minutes submitted a claim for a minimum day, eight hours (100 miles) and in addition, final terminal time at Hawk Junction for a total claim of 124 miles. The Company paid the claim for the minimum day but declined payment of the final terminal time.

The last paragraph of Article 10, Rule (b) providing for payment of final terminal time, states:

This rule does not apply to Road Switcher runs operating on a turn-around basis within a radius of thirty (30) miles or to work for construction service on which final terminal time will be included in time for computing overtime under Article 11.

The Company read a letter received from the Brotherhood, addressed to Superintendent R.H. Rankin, dated December 12, 1967, which stated, in part:

If this crew did not perform work train service, then they are entitled to final terminal time.

In support of the Company's contention that this crew recognized they were in work service, it was stated Conductor Hernden "booked" his crew for his tour of duty, outward and inward on the train register as "Work Extra 157"

Also presented were copies of the Conductor's Detention Report and Trip Ticket, both of which designate the train as a work extra. The Conductor detention report shows that he was "engaged in wrecking service at Limer on two occasions this tour of duty". He also classified his service on this document as "non revenue service"

It was also considered important to the Company's position that the Engineman of this train claimed and was paid 100 miles at through freight rates for 5 hours and 10 minutes in "Work Train service".

On these facts I am satisfied this crew engaged in service on a work train. The final paragraph of Article 10, Rule (b) therefore applies. For that reason this claim must be denied.

(signed) J. A. HANRAHAN
ARBITRATOR