

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 134

Heard at Montreal, Wednesday, November 13th, 1968

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF RAILROAD TRAINMEN**

### **DISPUTE:**

Claim of Conductor G.F. Heffernan and crew, Calgary, for 37 miles reduced from their ticket of November 29th, 1965, when required to switch the Amerada Petroleum Sulphur Plant at Mileage 52.8, Red Deer Subdivision.

### **JOINT STATEMENT OF ISSUE:**

Conductor Heffernan and crew were on a Northbound trip from Alyth to Red Deer on a regular wayfreight assignment. They had instructions to move empty cars stored at Olds, Mileage 56.5, to the Amerada Petroleum Sulphur Plant and move 29 loaded cars from the plant to Olds. The spur track servicing the sulphur plant projects from the main track at Mileage 52.8 and is 1,730 feet in length. Two movements between Olds and the spur, occupying a total time of 3 hours, were necessary to perform switching and clear Train No. 303.

The crew claimed payment for three hours (37 miles) based on Article 13 applying to this service but payment was declined. The employees contend that in declining payment, the Company has violated the provisions of Article 13, which reads:

In all classes of road service, except Road Switcher and work train service, when engine is run more than one mile off main track, mileage or hours made, whichever is the greater, will be paid for in addition to pay for the trip and paid for at the rate of class of service performed.

A side trip on a branch line shown in the time table as a subdivision does not constitute running off the main track.

### **FOR THE EMPLOYEES:**

**(Sgd.) S. McDONALD**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(Sgd.) R. S. ALLISON**  
**GENERAL MANAGER – PACIFIC REGION**

There appeared on behalf of the Company:

J. G. Benedetti – Supervisor Personnel & Labour Relations, Vancouver  
C. F. Parkinson – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

S. McDonald – General Chairman, Calgary  
P. P. Burke – Local Chairman, Calgary

### **AWARD OF THE ARBITRATOR**

The claim in this case is for payment pursuant to article 13 of the collective agreement, and the only question is whether article 13 applies on the facts set out in the joint statement of issue. The movement in question was a switching movement, and it was performed by Conductor Heffernan and his crew in the course of a northbound trip from Alyth to Red Deer. It would appear that the train proceeded from Alyth to Olds (Mileage 56.5), and that from that point certain cars were moved back from Olds to the Amerada spur, which left the main track at Mileage 52.8. It is not argued here that this movement could give rise to any claim under article 23, and I do not decide that question in this case. It may be observed, however, that the movements from Mileage 56.5 back to Mileage 52.8, and return (and there were two such movements), were incidental to the switching operation.

In the Canadian Railway Office of Arbitration **case number 4**, a claim was made under article 23, where a train was left at Breton while the engine was run ahead some three miles to Goliad spur, while certain switching was performed, and the engine then returned to Breton, to resume the trip. It was held that article 23, dealing with turnaround service within a trip, did not apply in those circumstances. The arbitrator did, however, suggest that article 13 was the provision of the collective agreement which did apply in such a case. He indicated that the purpose of the movement was switching, and stated that while the switching did not commence until the spur was actually reached, the movement forward to the spur was a definite part of the switching operation. In the instant case, it is immaterial that the movement from Olds to the Amerada spur was a backward rather than a forward movement. The issue in **case No. 4**, of course, was whether article 23 applied. That issue is not raised here. Here, as I have noted, the issue is whether article 13 applies. While the arbitrator indicated that article 13 applied in the circumstances of **case No. 4**, it does not automatically follow that it applies in this case, in spite of the general similarity between the two situations. The essential condition for the application of Article 13 is that the engine be run more than one mile off the main track. The length of the Amerada spur was substantially less than one mile. While the mileage travelled on the main track from Olds back to the spur was “a definite part” of the switching operation, as was pointed out in **case No. 4**, it was nevertheless mileage on the main track. The only mileage off the main track was that on the spur itself.

Although this is, in a general way, the sort of situation to which article 13 is directed, that article does not apply in the particular circumstances of this case since it has not been established that the engine was run more than one mile off the main track. Although the engine was run more than one mile in the switching operation, this does not bring the situation within article 13.

Accordingly, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**