

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 154

Heard at Montreal, Tuesday, June 10th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor G.E Archibald and crew for payment on basis of two separate tours of duty October 21, 1967.

JOINT STATEMENT OF ISSUE:

On October 21, 1967 unassigned Conductor G.E. Archibald and crew (Brakemen E.J. Kapp and S. Holomay) were called at Kelowna, B.C., to handle a freight train to Kamloops Jct. They were ordered for 1545 and the train departed at 1710. On arrival at Vernon, B.C. at 1850, a distance of 33.5 miles from Kelowna, Conductor Archibald and crew were instructed to leave the cars in their train at Vernon, return to Winfield, a distance of 20.5 miles, to pick up two loads of perishable fruit and then continue to their objective terminal of Kamloops Jct., picking up the cars which they had previously left at Vernon.

For the service performed, Conductor Archibald and crew submitted time returns claiming payment on the basis of two separate tours of duty, namely one tour of duty from Kelowna to Kamloops Jct., and another tour of duty from Vernon to Winfield and return to Vernon. Payment was made on the basis of one continuous tour of duty, i.e., Kelowna–Vernon–Winfield–Kamloops Jct These employees subsequently submitted claims for payment of 59 miles each being the difference between the 286 miles claimed and the 227 miles paid, on the grounds that in refusing to make payment on the basis of two separate tours of duty the Company had violated Article 5, Rule 10, Clause (a), and Article 5, Rule 13, Clause (a) of the respective Conductors' and Trainmen's Agreements.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) J. S. CORBITT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath – Labour Relations Assistant, Montreal
A. J. DeiTorto – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

J. S. Corbett – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The Company raises the preliminary objection that this grievance is not arbitrable, the time limits for processing the matter to arbitration not having been complied with. At the hearing of this matter the issue was restricted to the question of arbitrability, any hearing on the merits being adjourned pending the decision of that issue.

The grievances appear to have been brought in timely fashion, and to have proceeded through the grievance procedure to the joint conference stage. A decision was rendered in writing by the Assistant Vice-President, Labour Relations on October 25, 1968. The appropriate collective agreements require that a request for arbitration be made within sixty calendar days from the date of that decision. There is also provision for the extension of the time limits by mutual agreement. The time limit for requesting arbitration was in fact extended by mutual agreement on three occasions with respect to the instant case. The last such extended period expired on April 22, 1969. The Union request for arbitration was made on May 6th, 1969.

There is no doubt that the request for arbitration was not made within the time limits specified in the collective agreement. Because of this it is clear that under the general law, and under many previous awards in the Canadian Railway Office of Arbitration (referred to in **Case No. 149**), the grievance may not be brought to arbitration. Further, under Section 5 of the agreement establishing the Canadian Railway Office of Arbitration, a request for arbitration may only be made in the manner and within the period provided for that purpose in the applicable collective agreement. The application was not so made in this case and accordingly I have no jurisdiction to hear the grievance.

For the foregoing reasons I must conclude that I have no jurisdiction in the matter, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR