CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 196

Heard at Montreal, Tuesday, December 9th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Claim of Conductor L. R. Newberry and crew, Moose Jaw, for 91 miles reduced from their ticket submitted when making a trip from Swift Current to Mileage 107.5 and return to Swift Current on April 7th, 1969.

EMPLOYEES' STATEMENT OF ISSUE:

This crew was initially ordered at Swift Current at 0730 for straight-away freight service from Swift Current to Moose Jaw and departed at 0805. When they reached Mileage 107.5 they were contacted by radio and instructed to return their train to Swift Current as a derailment had occurred at Mileage 20.5. The return movement was made and the train yarded at Swift Current at 0855 and the crew off duty at 0900, following which, they were immediately ordered for the Auxiliary to run to Mileage 20.5, the scene of the derailment.

The crew submitted claims for two separate trips one in freight service under the provisions of Article II, Clause (c)(1) and (2), and, the other for a trip in work train service under the provisions of Article 20, Clause (f), first paragraph. Payment of the claims have been declined on the grounds that this crew performed turnaround service within a trip as contemplated by Article 23, Clause (a)(2), during a continuous tour of duty on the basis of their original call for straight-away service from Swift Current to Moose Jaw.

The Employees contend that Article 23, Clause (a)(2) is not applicable under these circumstances and that Article 11, Clause (c)(1) and (2) applies to the original trip and that Article 20, Clause (f), first paragraph, applies to the second trip, and that these rules have been misinterpreted and violated by the Company.

FOR THE EMPLOYEES:

(SGD) S. McDONALD
GENERAL CHAIRMAN

There appeared on behalf of the Company: Tuesday, December 9th, 1969
P. A. Maltby – Supervisor, Labour Relations, Winnipeg
C. F. Parkinson – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:
S. McDonald – General Chairman, Calgary
R. T. O'Brien – Vice-General Chairman, Calgary
J. Ferguson – Local Chairman, Kamloops

INTERIM AWARD OF THE ARBITRATOR

In this case, as in **Case No. 195**, the company has raised a preliminary objection relating to the sufficiency of notice of application for permission to submit separate statement of issue. The material facts in this case are the same as those in Case No. 195, and for the reasons there set out it is my conclusion that proper notice has been given. The matter will be set on for hearing in the usual course.

(signed) J. F. W. WEATHERILL
ARBITRATOR

On Tuesday, January 13, 1970, there appeared on behalf of the Company:

P. A. Maltby – Supervisor, Labour Relations, Winnipeg
J. Ramage – Special Representative, Industrial Relations, Montreal

And on behalf of the Brotherhood:

R. T. O'Brien – General Chairman, Calgary

AWARD OF THE ARBITRATOR

Conductor Newberry and crew, as noted in the Employees Statement of Issue, were called at Swift Current for 0730 on April 7, 1969, for straight-away freight service to Moose Jaw. They left Swift Current at 0805, but were stopped at 0820 at Mileage 107.5, 2.9 miles east of Swift Current. They were advised of a derailment at Mileage 20.5, and instructed to return to Swift Current. They reached Swift Current at 0855. It is the union's contention that this constituted a complete trip, for which the crew was entitled to a basic day's pay, pursuant to article 11(c)(1) and (2).

Upon their return to Swift Current Conductor Newberry and crew were ordered to take auxiliary equipment and proceed to the scene of the derailment. They left Swift Current with the auxiliary equipment at 0930, arriving at Mileage 20.5 at 1435, where they worked unloading cars of ballast and rerailing equipment until 2045, they were then deadheaded by taxi to Moose Jaw, where they arrived and were released from duty at 2115. It is the union's contention that this was a second trip, payable as work train service pursuant to the provisions of article 20.

The company contends that there were not two trips, but only one, and that the initial phase from Swift Current to Mileage 107.5 and return was "turnaround service within a trip", constituting only part of their "continuous tour of duty".

Conductor Newberry and crew were originally called for straight-away freight service, pursuant to article 11 (c)(2) of the collective agreement. That article provides as follows:

> **(2) STRAIGHT-AWAY AND TURNAROUND SERVICE**
> Trainmen will be notified when called whether for straight away or turn-around service and will be compensated accordingly. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call, such as accident, locomotive failure, washout, snow blockade, or where line is blocked.
>
> Trainmen will not be called for turn-around service when such service involves turning at terminal 100 miles or more distant from the initial terminal. When the distance between the initial terminal and the objective terminal is less than 100 miles, the objective terminal may be regarded as a turnaround point and trainmen in unassigned service, when called for turn-around service, run in an out of such point on a continuous time basis. When the turn-around point is an intermediate station, trainmen may be called for turn-around service without regard to the distance between such station and the initial terminal.
>
> A crew in unassigned service called for a straight away trip and released from duty at the objective terminal of that trip will not be run around by an unassigned crew called for turn-around service over the same route.
>
> A crew in unassigned service may be called to make more than one short trip and turn-around out of the same terminal and paid actual miles, with a minimum of 100 miles for a day provided (1) that the road miles of all trips do not exceed 120 miles, (2) that the road miles from the terminal to

> the turning point do not exceed 30 miles, and (3) that the crew shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, computed from the time initial terminal time ends on the initial trip, except as a new day, subject to the first-in first-out rule or practice.

It will be observed that this article draws a distinction between straight-away and turnaround service, and limits the proper extent of turnaround service. When a train is run out to a turnaround point and then returned to its initial terminal it has, if it was in turnaround service, completed a trip. It may be that for a crew assigned to turnaround service one short trip would constitute their day's work, and they would be entitled to the basic day payment provided for in article 11(c)(1), regardless of the number of miles run. In some cases, however, crews could be assigned to more than one turnaround trip in the course of a day's work, subject to the fourth paragraph of article 11 (c)(2).

It is possible also for turnaround service to occur within the course of a straight-away trip – or apparently within any trip – as article 23(a)(2) provides:

> **2.** Trainmen performing turnaround service within a trip, including back up movement into terminal because of locomotive failure, accident, stalling, etc., will be paid for the actual miles run. The points between which turnaround service is performed or back up movement into terminal is made will be regarded as turnaround points and time at the turnaround points will be paid for in accordance with Article 11 Clause (f). Actual miles paid for will be added to the mileage of the trip and time paid for will be paid in addition to pay for the trip but will be deducted in computing overtime.

Such "turnaround service within a trip" has been the subject of a number of cases in the Office of Arbitration. Here, reference may be made particularly to **Case No. 6** and **No. 7**, and also to **Case No. 197**, heard at the same time as this. The instant case differs from those cases in that the "trip" – that is the straight-away freight service from Swift Current to Moose Jaw – was not proceeded with. If, after their return to Swift Current, Conductor Newberry and crew had subsequently been able to take their train through to Moose Jaw, then the initial run to Mileage 107.5 and return would indeed have been "turnaround service within a trip", within the meaning of article 23 (a) (2). As to the application of this section, I am in agreement with the company's view that it might apply in circumstances such as this where the turnaround was necessary because of an accident occurring elsewhere, and where there was no breakdown in Conductor Newberry's own train. In this particular case, however, the section does not apply because there was no turnaround service "within a trip". Here, the turnaround service was the trip. In fact, the effect of what happened was to convert this service from straight-away to turnaround. This conclusion, it should be stressed, is based upon the particular circumstances of this case. These were circumstances which could not be foreseen at the time of call, and the company could quite properly have changed the call from straight-away to turnaround service. That it did not do so cannot alter the facts as to the service performed. The fact is that when Conductor Newberry and crew returned to Swift Current their trip in freight service was over, even though it had not been completed. In my view nothing turns either on the fact of Conductor Newberry's booking off, or on the fact that he and his crew were not formally released from duty. The fact is simply that the trip was over. In reaching this conclusion I have given consideration to the removal from the collective agreement, some years ago, of the "automatic end of trip" rule. Under that rule, there would have been no doubt that the first trip was over upon the return to Swift Current. There is now no such rule, and the trip did not end automatically by virtue only of the return to Swift Current. This is not to say, however, that it did not end. on the evidence in this particular case, and under the provisions of the current collective agreement, however, the abortive straight-away trip in freight service from Swift Current to Moose Jaw did end at this time, and I so find.

It appears that Conductor Newberry and crew were then first out from Swift Current, and they were accordingly directed to proceed with auxiliary equipment to the scene of the derailment, and to perform work service there. It may well be that in other circumstances some other crew might have been entitled to this work. In this case, however, no such claim arises. It is important to note, however, that Conductor Newberry and crew are in effect claiming for this work as an entirely separate assignment or tour of duty, and in my opinion they are entitled to do so on the facts and under the provisions of the collective agreement.

I am unable to accept the company's contention that Conductor Newberry and crew proceeded from Swift Current to Mileage 20.5 in freight service. Rather, they proceeded with auxiliary equipment to the scene of the derailment, performed work service there, left the equipment and were then deadheaded to Moose Jaw. In my view

this cannot be described as freight service in any sense. It was work train service. It may be noted that in **Case No. 47** a crew, first out in unassigned pool freight service at Brandon, were called to take an auxiliary train westward to Red Jacket, to assist in rerailing certain equipment. They were stopped at Moosomin when it was found the auxiliary would not be needed at Red jacket, and eventually returned to Brandon. It was the company's contention in that case that the crew was in work train service throughout the time referred to, even though no actual wrecking work had to be performed. This contention was upheld by the arbitrator, and with that decision I respectfully agree.

Article 20, which deals with work train service, contains provisions dealing with the case where crews in work train service are required to handle revenue freight cars other than those required to be moved in connection with the work service being performed. These provisions are not applicable because Conductor Newberry and crew did not handle revenue freight cars in this sense while in work train service. Earlier that day, while in freight service, they had done so, but that was, as I have found, in the course of a separate and distinct trip. Again, there is a provision in article 20 (d) relating to the performance of work train service en route by crews in through freight service. In this case, for the reasons given, it is my conclusion that Conductor Newberry and crew were not at this time in freight service, but were used in work train service, and were entitled to payment under article 20 (f). It is interesting to note that in the case of a crew assigned in work train service, where revenue freight cars are handled (other than in connection with the work service), such crew is to be paid not less than 100 miles at through freight rates for such service in addition to and irrespective of compensation provided for the assigned work train service, pursuant to article 20 (g).

For the foregoing reasons, it is my conclusion that Conductor Newberry and crew were entitled, in the circumstances of this case, to make separate and distinct claims in respect of these separate trips. They are entitled to the relief asked.

(signed) J. F. W. WEATHERILL
ARBITRATOR