

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 204

Heard at Montreal, Tuesday, April 14th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor G.I. Mantha and crew, of Capreol, for 77 miles at wayfreight rates of pay, October 11, 1968.

JOINT STATEMENT OF ISSUE:

On October 11, 1968, Conductor G.I. Mantha and crew (Brakemen G.A. Hoag and B.L. Purdon) were ordered at Brent in straight-away service for their regular assignment, i.e. wayfreight train No. 523, Brent to Capreol. After reporting for duty, train proceeded to Daventry, a distance of 6.7 miles from Brent, lifted spreader, returned to Brent spreading ballast enroute and then continued to Capreol, the final terminal, i.e. the point for which called.

The conductor and crew claimed payment for the service performed on the basis of two separate tours of duty, namely, one time return claiming 100 miles each for the service from Brent to Daventry and return and another time return claiming 170 miles each for the service from Brent to Capreol. The Company allowed payment in the amount of 193 miles each on the basis of continuous service from Brent to Daventry to Brent to Capreol.

These employees subsequently submitted claims for payment of 77 miles each at wayfreight rates of pay, being the difference between the miles claimed and the miles paid. Payment of these claims was declined by the Company and the Union alleges that, in refusing to make payment, the Company violated Article 9, Rule (b) and the first paragraph of Article 9, Rule (d), Agreement 4.16.

FOR THE EMPLOYEES:

(SGD.) G. R. ASHMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
J. R. Gilman	– Labour Relations Assistant, Montreal
W. D. Connon	– Superintendent Transportation, Capreol
R. W. Greene	– Assistant Superintendent, Toronto
M. DelGreco	– Employee Relations Assistant, Capreol

And on behalf of the Brotherhood:

G. R. Ashman	– General Chairman, Toronto
V. L. Hayter	– Secretary, General Committee, Stratford

AWARD OF THE ARBITRATOR

The issue arising in this case is similar to that which has been dealt with in a number of cases in the Canadian Railway Office of Arbitration. The cases are reviewed and the issue discussed most recently in **Cases 196** and **197**. Those cases involved a collective agreement between other parties (another railway), although the provisions involved are substantially similar.

In the instant case the Union relies on Article 9 (d) of the agreement, which provides as follows:

9 (d) 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, engine failure, washout, snow blockade or such other like emergency.

Trainmen will not be called for turn-around service where the distance from the terminal to the turn-around point is 100 miles or over and in unassigned service the first-in first-out rule will apply to unassigned trainmen at the turn-around point.

This does not apply to work service (including Sperry cars, inspection cars, weeding machines and similar equipment when used in service during trip or day's work) wreck or construction service.

Here, the grievors were called for straight-away service from Brent to Capreol. In fact, they performed that service. Before departing for Capreol however, they carried out the turnaround operation from Brent to Daventry and return. This was not a change in notification, as contemplated by Article 9 (d). The straight-away assignment was not cancelled, but was in fact carried out. In **Case No. 196** it was held that in the circumstances there, a straight-away assignment was in fact converted to turnaround service. That conclusion was justified in the particular circumstances of that case. The instant case, however, resembles much more closely **Case No. 197**, where the crew carried out its assigned straight-away service (as here) but preceded that with a short turnaround assignment assisting another train. In my view, the reasons set out in **Case No. 197** apply in this case. Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR