

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 209

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer J. Forbes of Toronto for 100 miles submitted under the provisions of Article 77 account tied up at Gravenhurst on August 30, 1969.

JOINT STATEMENT OF ISSUE:

On August 29, 1969 Engineer J. Forbes was ordered at Toronto for his regular passenger assignment to South Parry for 2259 hours on train #107. Before departure of train #107 from Toronto, a derailment of another train occurred on the Bala Subdivision which made it impossible for train #107 to travel on its normal route to South Parry. As a consequence it became necessary to reroute #107 via the Newmarket Subdivision through Gravenhurst to Capreol. Engineer Forbes arrived at Gravenhurst at 0310 hours August 30 and went off duty at 0325 hours.

Subsequently the derailment was cleared and at 1130 hours August 30, Engineer Forbes was ordered to deadhead by taxi from Gravenhurst to South Parry to protect his regular return passenger assignment train #4 which was no operating on its normal route, South Parry to Toronto.

Engineer Forbes submitted a ticket under Article 77 claiming 10 miles alleging he had been tied up between terminals when released from duty a Gravenhurst on August 30, 1969. The Company declined payment of the claim.

FOR THE EMPLOYEES:

(SGD.) E. J. DAVIES
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

M. A. Cocquyt	– System Labour Relations Officer, Montreal
C. F. Wilson	– Labour Relations Assistant, Montreal
W. S. Mason	– Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

E. J. Davies	– General Chairman, St. Thomas, Ont.
A. Miller	– Local Chairman, Montreal
D. E. McAvoy	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor was ordered in straight-away service, Toronto to South Parry. Contrary to what is stated in the Joint statement of issue, it is agreed that the grievor was notified, during the course of his trip, of a derailment which had occurred between South Parry and Waubamik. While the line was clear as far as South Parry, the train could not have continued on its intended route to North Bay, and the rerouting via Gravenhurst was quite proper.

Article 6 of the collective agreement deals with the matter of the nature of the call given employees, that is, for straight-away or turn-around service. Such notification is not to be changed unless necessitated by circumstances which could not be foreseen at the time of the call. In the instant case, unforeseen circumstances did occur, but while the destination of the grievor's run was changed, the nature of the call, as between straight-away and turnaround service, was not. In the Company's submission, the grievor was properly released from duty at Gravenhurst, whence, subsequently, he was deadheaded to South Parry to protect his regular return assignment. He was paid for deadheading time under Article 66.3 of the collective agreement, which contemplates such payment in circumstances "where deadheading is coupled with service paid for at road rates".

It is the Union's contention that the grievor was entitled to an additional payment under Article 77.1 of the collective agreement. That article provides as follows:

77.1 Engineers other than those in wreck, work, construction, snow plow and flanger service, may be tied up at any point between the initial terminal and the point for which called and the tie-up point shall be recognized as the final terminal. Engineers so tied up shall be paid actual miles or hours to the tie-up point but not less than a minimum day of 100 miles, and from time tied up until again resuming duty will be compensated hour for hour on the basis of 1/8th of the daily rate, as per class of service and engine involved, for the first 8 hours in each 24 hours so held. When resuming duty a new day will commence. In the application of this paragraph to engineers ordered for a turn-around trip, the turning point or any intermediate point will be considered as being between terminal points. In the application of this paragraph it is not the intention the engineer will be left without an engine.

In my view, it cannot properly be said that when the grievor was released from duty at Gravenhurst he was "tied up between terminals". Article 77.1 clearly contemplates situations where an engineer is tied up and held prior to the completion of a trip. It is true of course that the grievor himself did in fact arrive at South Parry, his original destination. He did so on his own however, without an engine, and by deadheading. He was thus able to protect his regular return trip which was made in the usual way. While he was originally called for straight-away service to South Parry this call was changed to one for straight-away service to Gravenhurst. Article 6, as has been noted deals with the matter of straight-away and turn-around calls. They are to be changed only in the circumstances referred to. Either the article is broad enough to include changes of destination in such circumstances or it must be held not to deal with the subject of destination at all. In either case the conclusion must be, in this case, that the grievor was ultimately called for service to Gravenhurst, and I am unable to see any violation of the collective agreement in this.

It was acknowledged by the Union that had the return movement again been via Gravenhurst, the grievor could have taken it from that point and no claim would have arisen. In my view the fact that the grievor took the return movement from South Parry in the usual way does not alter the situation. Indeed, it would be surprising if an engineer's entitlement under Article 77 depended upon the possibly fortuitous circumstances of his actual arrival at the original point for which he was called. There may well be cases where an engineer never reaches that original point, but where he is nevertheless entitled to payment under Article 77.

In the instant case, the grievor was not "tied up between terminals" within the meaning of Article 77. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR