

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 249

Heard at Montreal, Tuesday, November 10th, 1970

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Payment of 100 miles to Engineman A.B. Elesko for being held at away-from-home terminal after expiration of rest period.

JOINT STATEMENT OF ISSUE:

Job Application No. 7855 dated April 30, 1970 reads in part as follows:

- (1) Two (2) Engineers – Train Nos. 1 & 2
Passenger Daily – North Vancouver – Lillooet
Home Terminal – North Vancouver.

Job application No. 7860 dated May 6, 1970 named Engineman A.B. Elesko as being one of the successful applicants for the Engineman's position on Train Nos. 1 and 2 between North Vancouver and Lillooet.

On May 12, 1970 Engineman A.B. Elesko arrived at Lillooet as Engineer on Train No. 1 and, when booking off duty at 13:50K requested 8 hours rest with 2 hour call before being required to leave Lillooet to return to North Vancouver. Train No. 2 departed Lillooet at 17:15 on May 12 with another Engineer on duty. Engineer A.B. Elesko submitted a Time Return Reference No 100A dated May 13, 1970 claiming 100 miles for being "Held away from home terminal after expiration of rest period."

The Regional Manager has indicated that he can find no support for the claim in the Collective Agreement and has refused his approval for payment.

FOR THE EMPLOYEES:

(SGD.) K. G. MASON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. C. MORRIS
REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond – Chief Industrial Relations Officer, Vancouver
H. Collins – Supervisor-Labour Relations, Vancouver

And on behalf of the Brotherhood:

K. G. Mason – General Chairman, Williams Lake

AWARD OF THE ARBITRATOR

Engineman Elesko's assignment on May 12, 1970, was to take train No. 1 from Vancouver to Lillooet, leaving Vancouver at 0800 hours and arriving at Lillooet at 1315, and to take Train No. 2 from Lillooet to Vancouver, leaving Lillooet (according to the schedule) at 1605 and arriving in Vancouver at 2145 hours. From the start to the finish of his day on this assignment would take some fourteen hours, although there would be a period of some two hours or so off-duty time between arrival at Lillooet on Train No. 1 and departure there from on Train No. 2. There is no doubt, however, that the assignment for which he applied, though not clearly worded in this respect, was, as Engineman Elesko well knew, an assignment to take Train No. 1 and Train No. 2 on the same day, with alternate days off. This had been the assignment for some years, and Engineman Elesko had himself worked on it previously.

It appears that Engineman Elesko may have taken the course he did in order to influence the company to change the assignment so that he would be able to have his layover time in Lillooet, where, as it happens, he makes his home. It is quite clear from the bulletin on which he bid, of course, that the home terminal was Vancouver. Engineman Elesko's motives in the matter are not, in my view, a material consideration. If he was entitled to take the action he did, and if he is entitled to the relief claimed, then he is entitled to success in this grievance whatever the ultimate results may be.

It is clear from article 23(a) that Engineman Elesko could not be required to leave the terminal at Lillooet until he had had at least eight hours rest, which he had requested and entered when booking in on the register. He was within his rights in booking rest, and the company could either hold up Train No. 2, which he was assigned to take from Lillooet to Vancouver, or find another engineer to take it in accordance with its schedule. It chose to follow the latter course, and there was nothing improper in that. The train left, and Engineman Elesko remained. He thus did not take up that part of his assignment on May 12 which involved travelling from Lillooet to Vancouver.

His next assignment was to take Train No. 1 from Vancouver to Lillooet on May 14. He was able to carry out this assignment by deadheading from Lillooet to Vancouver, without pay, on May 13. He was not scheduled to take Train No. 2 from Lillooet to Vancouver that day, and that train, it seems was quite properly taken by another employee. His claim is, however, that he was held at an away from home terminal, and that he was entitled to payment on that basis pursuant to article 10 of the collective agreement.

Article 10 provides as follows.

Article 10 – Held Away From Home Terminal

- (a) Engineer in pool freight and in unassigned service held at other than home terminal longer than 16 hours without being called for duty, will be paid minimum passenger rates on the basis of 12 1/2 miles per hour for first 8 hours in each subsequent 24 hours thereafter. Time to be computed from time pay ceases on the incoming trip until the time pay commences on the next outgoing trip.
- (b) Should an Engineer be called for service or ordered to deadhead after pay begins, held-away-from-home-terminal time shall cease at the time pay begins for such service or deadheading.
- (c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.
- (d) When rest period in excess of 8 hours is booked, the 16-hour period before pay commences will be increased correspondingly. For example, if 10 hours' rest is booked, pay for time held will commence after the expiration of 18 hours.
- (e) For the purpose of applying this Rule, the Company will designate a home terminal for each Engineer in pool freight and in unassigned service.
- (f) Engineer in passenger, mixed and wayfreight service held at away-from-home-terminal will be paid minimum passenger rates on the basis of 12-1/2 miles per hour for the last 8 hours or portion thereof of each 24 hours so held after assigned departure time of train. Payment under held-away-from-home terminal article to cease when Engineer is required to report for duty.
- (g) The Company will make every effort to return Engineer to his home terminal as soon as possible.

It is apparent from a reading of article 10, that the only portion which might be advantageous to Engineman Elesko in these circumstance is article 10(f). Was he held after the departure time of his train, within the meaning of that provision? Clearly not. He was free, if he wished, to take his train at the appointed time. He did not do so. He could not be penalized, as he was entitled to book rest. But he was not "held". The provision in question is directed at quite different circumstances.

It has not been shown that there was any violation of the collective agreement, or that the grievor was entitled to any payment which he did not receive. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR