

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 330

Heard at Montreal, Tuesday, December 14, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Conductor M. Fagan and Brakemen M. Voyce and E.J. Nesbitt for payment of 100 miles account having been cancelled thirty minutes after reporting for duty at Chalk River, Ont., May 6, 1970.

JOINT STATEMENT OF ISSUE:

On May 6, 1970, at Chalk River, Ont., Conductor M. Fagan and crew were called to report for service as soon as possible as it was the Company's intention to have them proceed eastward with engine and caboose to Cobden to assist Train No. 952 which had stalled due to its engine becoming inoperative. They reported for duty at 1610, but before relief engine was made available to them the engine crew on No. 952 was successful in restoring their engine to service and proceeded eastward without assistance. Conductor Fagan and crew were then cancelled at 1640. They submitted a wage claim for 100 miles account called and cancelled. The Company agreed to allow payment of 37 1/2 miles in accordance with Article 25. The Union alleges that the crew should have been paid a minimum day under the provisions of Article 11, Clause (b).

FOR THE EMPLOYEES:

(SGD.) L. H. BREEN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. BROMLEY
REGIONAL MANAGER, EASTERN REGION

There appeared on behalf of the Company:

J. Dow – Supervisor Personnel & Labour Relations, Toronto
H. E. Lyttle – Supervisor Personnel & Labour Relations, Toronto
J. Ramage – Special Representative, Montreal

And on behalf of the Union:

L. H. Breen – General Chairman, Montreal
A. W. Crate – Vice-General Chairman, Smiths Falls
B. R. Young – Secretary, General Committee, Montreal

AWARD OF THE ARBITRATOR

Article 11 (b), under which the Union claims, is as follows:

- (b) Runs of one hundred (100) miles or less, either straight away or turnaround shall, except as otherwise provided in Article 14, be paid as 100 miles.

Had the grievors made any sort of “run”, then it would appear they would have been entitled to what is, in effect, the minimum payment provided for by that article. As it was, the grievors were called for service and reported, so that they were entitled to payment from the time for which they were called. They were not, however, required actually to perform any of that service, it being cancelled as set out in the Joint Statement.

Article 25, on which the Company relies, is as follows:

When trainmen are called and cancelled they will be paid through freight rate with a minimum of thirty-seven and one-half (37-1/2) miles if cancelled after reporting for duty and eighteen and three-quarters (18-3/4) miles if cancelled before reporting for duty and will stand first out except in such cases as a minimum day is paid for. Trainmen held for duty and not used, their vans having been sent out, will be paid one hundred (100) miles for each twenty-four hours while waiting return of van.

Here, the grievors were cancelled after reporting for duty. Having reported, they were entitled to payment from the time for which they were called, and, as article 25 clearly contemplates, they were entitled to a payment of at least 37-1/2 miles, in such circumstances. This is the payment which was made, since the time during which they were on duty did not amount to the minimum guaranteed. It is agreed that this was not a case to which the last sentence of article 25 applies, and it was not otherwise a case for which a minimum day would be paid for. Accordingly, the grievors would still be first out. In this case, it seems, this was no advantage to the grievors since, being the only crew at Chalk River, they would be first out in any event. That particular circumstance, however, does not affect the principle of the case.

It is clear to me that article 25 plainly applies to this case the grievors were called. Then they were cancelled. They were cancelled after reporting for duty. They had not taken out a run. They were entitled to a minimum payment as the collective agreement contemplates. This is the payment which was made. They continued to stand first out.

Accordingly, article 25 was correctly applied in the circumstances, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR