

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 350

Heard at Montreal, Tuesday, April 11th, 1972

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim for payment of 67 miles by conductor H. Bourcier, brakeman R. Bouchard and G. Gravel for work performed on the Menihék Subdivision at Esker, Nfld.

JOINT STATEMENT OF ISSUE:

On December 23, 1971, Conductor H. Bourcier and crew were ordered from Oreway Nfld. to Esker Nfld. on Extra 138 North and instructed to return to Oreway Nfld. At Esker they performed work for 4 hours and ten minutes which equals 67 miles. This claim was submitted under Article 39.01 of the Collective Agreement.

The Company refused to pay the claim of 67 miles.

FOR THE EMPLOYEES:

(SGD.) J. J. SIROIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. L. MORIN
SUPERINTENDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	– Counsel
P. L. Morin	– Superintendent, Labour Relations, Sept Îles
R. C. Martin	– Superintendent, Employee Compensation,
F. LeBlanc	– Labour Relations Assistant
T. Leger	– Labour Relations Assistant, Sept Îles
G. F. McDonald	– Chief Dispatcher, Sept Îles
R. Morris	– Trainmaster, Sept Îles
W. A. Adams	– Road Foreman of Engineers, Sept Îles
B. K. Wilson	– Supervisor-Communications & Signals, Sept Îles
B. Gosselin	– Road Foreman of Engines – Transportation, Sept Îles

And on behalf of the Union:

J. J. Sirois	– General Chairman, Sept Îles
G. W. McDevitt	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Article 39.03 of the collective agreement provides as follows:

39.03 Trainmen required to pick up and/or set off at Esker or junction points will be paid on the minute basis for all time, computed from thirty (30) minutes after time of arrival to time of departure, in addition to pay for the trip.

Conductor Bourcier and crew arrived at Esker at 2:25 p.m. They departed therefrom at 6:50 p.m. If, during this period, they were required to “pick up and/or set off” then they would be entitled to payment therefor, pursuant to Article 39.03, deducting the first thirty minutes after arrival.

The question is therefore one of characterization of the work performed after arrival at Esker.

The train in question was a passenger train which the crew took from Oreway to Esker. They were instructed to turn the train around at Esker in order to return to Oreway. It was not a question of picking up other cars, as there was none either on the siding or on the back track at Esker, and no car was left on departure from Esker. In most cases, it would be my view that the switching necessary to turn a train around was not “picking up or setting off” as those terms are used in Article 39.03. I would not, however, say that the notions of “switching” and of “picking up and/or setting off” were mutually exclusive. “Switching”, I think, is a broad notion relating to a range of train movements, whereas “picking up and/or setting off” is a more precise notion, referring to what may be considered particular sorts of switching movements. In **Case No. 11**, cars were taken out and placed on a train in a yard, and one car was set off from that train and left in the yard. This work was considered “switching”, although this finding was made in the context of a different issue from that which is before me. It indicates however, that “picking up and/or setting off” is to be regarded as a form of switching. Not all switching need involve picking up or setting off.

In the instant case, the switching required was something more than that needed simply to turn the train around. Certain repairs were required to the power car, and for this purpose it had to be set off on the back track. If the car had been left there and another picked up in its place, then there would have been no question, it seems, but that this came within Article 39.03, even though the lost time to the crew might have been much less than it was in this case. If the same car, repaired, is picked up and incorporated in the same train that would not, in my view, affect the character of the move involved.

The move in the instant case was something more than simply the necessary sort of switching required to turn the train around. It involved the setting off and picking up of a car for repairs, and the sort of lost time for which Article 39, in my opinion, provides protection.

For these reasons, the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR