# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 484

Heard at Montreal, Tuesday, December 10, 1974

Concerning

## NORTHERN ALBERTA RAILWAYS COMPANY

and

## BROTHERHOOD OF LOCOMOTIVE ENGINEERS

### DISPUTE:

Whether Locomotive Engineer H.A. Stepney should be paid under Article 7 or Article 21 for his tour of duty on April 18, 1974.

### JOINT STATEMENT OF ISSUE:

Engineer Stepney was ordered for train No. 31, 1100, April 18, 1974. Engine left the shop track at 1050 and proceeded to train already made up in the yard. No. 1 brake test was made but train held and then cancelled due to washout on the line. As train was foul of Company service road crossing, crossing was cut, after which engine returned to shop track. Engineer Stepney went off duty at 1400.

Engineer Stepney claimed 104 miles at yard rates under Article 7 but was paid under Article 21 as follows:

| | | |
|---|---|---|
| Preparatory time | 15 minutes | 3 miles |
| Road miles | | 100 miles |
| Inspection time | 15 minutes | 3 miles |
| Total | | 106 miles |

The Brotherhood contends that switching was done and that Engineer Stepney should be paid at yard rates under Article 7 for a yard tour of duty not continuous with road service.

**FOR THE EMPLOYEE:**

**(SGD.) A. J. SPEARE**
**GENERAL CHAIRMAN**

**FOR THE COMPANY:**

**(SGD.) K. R. PERRY**
**GENERAL MANAGER**

There appeared on behalf of the Company:
K. R. Perry – General Manager, Edmonton

And on behalf of the Brotherhood.
A. J. Speare – General Chairman, Edmonton

## AWARD OF THE ARBITRATOR

Engineman Stepney was paid pursuant to Article 21, which provides that engineers cancelled after leaving shop or designated track will be paid full day with rules and conditions governing the service to which assigned. In his case, he was assigned to through freight service and was paid on that basis. His claim is that he should be paid at yard rates.

The Union refers to Article 7, which provides as follows.

> **7** Yard rates and conditions will apply to Locomotive Engineers in work, construction, auxiliary, snow plow, snow spreader or flanger service for a yard tour of duty which is not continuous with Road Service.

Even if it be considered that the grievor was on a yard tour of duty (and it is at least questionable that he performed "switching" in the proper sense of the term), the fact is that he was not in any of the classes of service with which Article 7 deals. That article simply does not apply in this case.

The Union contended that, in negotiations, the Company had given assurances that through freight service was covered by the article, because a claim by an engineer at Dawson Creek, who was assigned in through freight service but in fact worked in yard service all one day was paid. Of course the circumstances of that case were obviously very different from those of the instant case, and the justification (whether under the collective agreement or not) for that payment seems clear. As to any undertaking given with respect to the application of Article 7 in cases such as the present, however, that is a very different matter. The Union is, in effect, alleging that an express undertaking was given extending and indeed amending Article 7. Such an allegation, whose effect is to alter the terms of the collective agreement, must be proved by the clearest evidence. In the instant case, the allegation is disputed, and it is not supported by satisfactory proof. In the instant case, the Company is not estopped from relying on the clear terms of the collective agreement. These terms do not support the grievor's claim Accordingly, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**
**ARBITRATOR**