

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 506

Heard at Montreal, Tuesday, May 13th, 1975

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim by various Locomotive Engineers left at their away from home terminal.

JOINT STATEMENT OF ISSUE:

During the period July 26 to August 16, 1973, there was a series of rotating strikes by Non-Operating Employees of the Algoma Central Railway.

As a result of this strike action, several Locomotive Engineers were left at their away from home terminal, Hawk Junction.

The Locomotive Engineers have submitted penalty time claims in varying amounts.

The Company has declined payment.

FOR THE EMPLOYEES:

(SGD.) J. B. ADAIR
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. A. THOMPSON
VICE-PRESIDENT AND GENERAL MANAGER

There appeared on behalf of the Company:

V. E. Hupka – Manager, Industrial Relations, Sault Ste. Marie

And on behalf of the Brotherhood:

J. B. Adair – General Chairman, St. Thomas

H. Streich – Local Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

From the material before me it appears that the grievors found themselves at Hawk Junction, their away from home terminal, in circumstances where it was not possible for them to make the return trips to Steelton, their home terminal, which they would ordinarily have made. In those circumstances, it would appear that it would have been open to the Company either to hold the grievors over (thus becoming liable to payment under Article 30 or Article 30A of the collective agreement, for time held at away-from-home terminal), or to deadhead the grievors back to their home terminal (and be liable for payment of the appropriate time under Article 10).

While it seems there were engineers who stayed over at Hawk Junction (one of whom submitted a claim for time held, and was paid), the grievors, after waiting a certain time, returned to Steelton on their own without having received instructions. The circumstances may have varied somewhat in each case. It is the Company's position that the grievors thus abandoned the service, and that it is under no obligation with respect to payment. Since the grievors left on their own to return to their home terminal, it would seem to me that they could not reasonably claim payment for time held at away-from-home terminal. They were not held, and they did not in fact stay. They did, one way or another, return to Hawk Junction later in time to accept their calls so that, with the benefit of hindsight, it might be thought that the end result as the same as it would have been if they had stayed; and it may also be that they may do what they like during time held away (although this may be subject to certain qualifications, not relevant here); nevertheless, in the circumstances of this case, I cannot find that the grievors were in fact held at away-from-home terminal, and it is my conclusion that they would not be entitled to payment under Article 30 or Article 30A.

It remains to be considered whether the grievors were entitled to be paid "deadheading" pay for returning to their home terminal and later coming back to Hawk Junction for their assignments. These trips were made without the approval of the Company, and in most circumstances it would not be open to employees to make such trips on their own and then claim payment for the time involved. In this case, however, the circumstances were such that the grievors reasonably (and, as it turned out, accurately) believed that it would be some time before they would be able to take out their runs. They did wait some time without receiving instructions, and if they were to return home it was necessary for them to take advantage of available transportation. Later, the Company provided transportation for the grievors (in most cases) back to Hawk Junction. In my view, the grievors should not, in these circumstances, be considered to have abandoned the service, but rather should be considered to have properly deadheaded back to their home terminal. It should be repeated that this conclusion is reached having regard to the particular circumstances of the case.

Accordingly, it is my award that the grievors be paid in accordance with Article 10 for deadheading service from Hawk Junction to Steelton and from Steelton to Hawk Junction. I was not referred to any provision of the agreement which would support an award of out-of-pocket expenses.

(signed) J. F. W. WEATHERILL
ARBITRATOR