CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 512

Heard at Montreal, Tuesday, September 9, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims of Locomotive Engineer C.A. Brown, Saskatoon, for payment of additional 10 miles, July 15 and 16, 1974.

JOINT STATEMENT OF ISSUE:

On July 15, 1974, Locomotive Engineer C.A. Brown worked in freight service handling train No. 530 from Saskatoon to Watrous, a distance of 63 miles. During the trip, the train was also operated from Young Junction to Norco Mines Spur and return, a distance of 7.4, for which 10 miles were claimed and allowed as "doubling". The 10 miles for doubling were added to the trip mileage by the Company when computing the basic day payment of 100 miles.

The Brotherhood contends that in so doing, the provisions of Paragraph 64.1, Article 64 of Agreement 1.2, were violated by the Company.

Similar grievance was submitted for July 16, 1974.

FOR THE EMPLOYEE:	FOR THE COMPANY
(SGD.) A. J. SPEARE	(SGD.) S. T. COOKE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company..

A. J. DelTorto	– System Labour Relations Officer, Montreal
M. DelGreco	– Labour Relations Assistant, Montreal
J. A. Clark	– General Superintendent Transportation, Winnipeg
J. A. Cameron	– Regional Labour Relations Officer, Winnipeg

And on behalf of the Brotherhood:

A. J. Speare	– General Chairman, Edmonton
E. J. Davies	– Vice-President, Montreal

AWARD OF THE ARBITRATOR

Article 64 of the collective agreement provides as follows:

64.1 Doubling and Side Trips

Locomotive engineers will be paid not less than 10 miles for doubling and actual miles in excess of 10 miles.

64.2 Locomotive engineers, except on assigned runs, making side trips on subdivisions will be paid on the same basis as doubling and be paid terminal switching at the turnaround point on the side trip.

64.3 Locomotive engineers on assigned runs which include a side trip will be paid actual miles, plus detention and switching at turnaround point on side trip. In the application of this paragraph locomotive engineers making side trips which are not part of their assignment will not be run more than a total of 40 miles off their assignment during any one trip.

64.4 This Article does not apply to work train service.

There is no doubt that, on the days in question, Engineer Brown was entitled to the benefit of that provision. The Company agreed, and ten miles were added to his trip mileage, although the actual distance involved was less than that. This was correct, since Article 64.1 sets out a minimum mileage to be allowed in such cases.

The grievor claims, however, that this amount should not have been added to his trip mileage, where it was included in calculating his basic day, but should have been paid for as an entirely separate claim.

Article 64 does not provide for a payment separate from, and in addition to, the minimum. Rather, it specifies the amounts to be paid for doubling and for side trips, and places certain restrictions on such trips. It does not indicate that the payment is to be in addition to the minimum. In this respect, this case is comparable to **CROA Cases 9** and **148**.

The Union contended that the matter was governed by an interpretation which the Company had formerly placed on the article, at least in one area, and pursuant to which similar claims had been made. It must be emphasized however, that my jurisdiction is to decide cases in accordance with the terms of the applicable collective agreement, which is binding on me. Suppose, for example that Article 64 expressly provided what the Union now seeks, namely that payment for doubling be separate from and additional to the minimum day, but that the Company had, for a period of time failed to make such payment, placing a different interpretation on the provision. Could it then rely on such an "interpretation" to defeat claims made by employees? Clearly not. Except where a party is estopped by its actions or representations in a particular case from relying thereon, it is the collective agreement itself which must govern each case.

In the instant case, the provisions of Article 64 may be given full meaning and effect without conflicting in any way with those of Article 12 the "basic day" provision. Article 64 does not call for a separate and additional payment.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR