

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 591

Heard at Montreal, Tuesday, February 8 , 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer S. Shpeller, Winnipeg, for payment of additional 20 miles, July 16, 1975.

JOINT STATEMENT OF ISSUE:

Unassigned Locomotive Engineer S. Shpeller, completed his tour of duty and went off duty at his away-from-home terminal of Rivers at 2115 hours, July 15, 1975. He subsequently deadheaded from Rivers to Symington on Train 304, July 16th, reporting for duty at 1355 hours and departed at 1530 hours, arriving at 1815 hours, and went off duty 1935 hours.

For this deadhead trip, which consumed a total of 5 hours and 40 minutes, Locomotive Engineer Shpeller claimed and was paid 150 miles. In addition, he claimed held-away-from-home-terminal time until 1530 hours July 16th. The Company allowed payment until 1355 hours. A grievance was submitted for payment of the 1 hour and 35 minutes, or 20 miles, reduction made by the Company.

The grievance has been declined and the Brotherhood contends that in refusing to make payment Paragraph 74.1, Article 74, of Agreement 1.2 has been violated by the Company.

FOR THE EMPLOYEE:

(SGD.) A. J. SPEARE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company.

A. J. DelTorto – System Labour Relations Officer, Montreal
R. Birch – System Labour Relations Officer, Montreal
T. H. Randles – Trainmaster, Winnipeg

And on behalf of the Brotherhood:

A. J. Speare – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The grievor's claim in respect of the deadhead trip was paid. The claim now before me is for time held away from home terminal. That claim was paid in part, that is, in respect of the period ending at 1355 hours on July 16, when the grievor reported. He now seeks to be paid the balance of this claim, that is, in respect of the period ending at 1530 hours on July 1 when his train departed.

Article 74.1 provides as follows:

74.1 Except in cases of wrecks, snow blockades or washouts preventing locomotive engineers being returned to their home terminal, unassigned men held longer than 16 hours without being called for duty will be paid minimum passenger rates on the basis of 12.5 miles per hour for all time held in excess of 16 hours. Time to be computed from the time pay ceases on the incoming trip until the time pay commences on the next outgoing trip. The rerouting of locomotive engineers in order to return them to their home terminals shall not involve the payment of run-arounds. Time to be submitted on a separate time return.

It is common ground that the grievor was held away from home in excess of 16 hours and that he was entitled to payment under this article. The time in respect of which such payment is made is to be computed "from the time pay ceases on the incoming trip until the time pay commences on the next outgoing trip". In his time return, the grievor showed a total layover of eighteen hours and fifteen minutes, from the time he went off duty on the 15th until the time his train departed on the 16th.

There seems no doubt that the grievor's pay ceased on the 15th at the time he went off duty. The Company's position is that pay commenced on the 16th when he reported for duty. The Union's position is that pay commenced on the 16th when his train departed. In his claim for payment for his deadhead trip on July 16, the grievor showed his "total time on duty" as five hours and forty minutes, that is he included the entire period from the time he reported for duty (at 13:55) until he went off duty (at 19:35). He then claimed payment for 150 miles and this claim, as I have noted, was paid.

The issue, then, appears to be whether pay "commenced" for the grievor at 13:55 or at 15:30, with respect to the outgoing trip. This trip was a deadhead trip, and the grievor was entitled to payment therefor pursuant to Article 61.2, which is as follows:

61.2 Deadheading paid separately from service will be computed on the basis of miles or hours whichever is the greater, with a minimum of 100 miles, overtime pro rata, at the minimum rate applicable to the train on which the locomotive engineer travels.

It would appear that in this case payment on a mileage basis was greater than payment on the basis of hours. If the mileage had been short but the hours sufficiently long that the 100 mile guarantee was met, could the grievor properly have included in his claim for hours the period from the time he went on duty until the time his train left? It is my view that he could so claim, and that his pay would, accordingly, have "commenced" when he reported for duty. By the same token, in the circumstances of this case, where the grievor claims miles rather than hours, it is because the mileage basis of calculation is to his advantage by comparison with a calculation based on the hours on duty. It is not fair to say that pay only "commences" when he actually begins to travel over the mileage in question. By that time, a claim had already accrued which, in some circumstances, it might be to his advantage to make.

In fact, the grievor was entitled to claim pay from the time he went on duty even although, in the circumstances, it was to his advantage to make his claim on a mileage basis. Pay had, in my view, "commenced" for the grievor when he reported for duty. He was not entitled to claim for time held away from home in respect of the same period, and his claim was properly reduced. There has, therefore, been no violation of the collective agreement, and the grievance must be dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR