CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 619

Heard at Montreal, Tuesday, July 12th, 1977

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Regarding the proper interpretation of Article IV, paragraph 4.02 of the Collective Agreement between the Quebec North Shore & Labrador Railway Company and the Brotherhood of Locomotive Engineers.

EMPLOYEES' STATEMENT OF ISSUE:

Since May 1, 1976, thirty-six time claims have been submitted by Locomotive Engineers employed in Work Train Service, claiming double time after being on duty twelve hours or more, in accordance with Article IV, paragraph 4.02.

The Company has adjusted these time claims and, in our opinion, are using the formula spelled out in Article IV, paragraph 4.01, thereby reducing the miles, claiming that payment cannot be made partly under one article and the balance under another article.

The Brotherhood contends that Article IV, paragraph 4.02 is explicit and that part of the paragraph dealing with work train service is applicable in this instance and the Company is in violation of Article IV, paragraph 4.02. We are requesting that all time claims submitted under this Article (IV, paragraph 4.02) since May 1, 1976 and which were adjusted by the Company, be paid in accordance with our interpretation of Article IV, paragraph 4.02.

This dispute was progressed in accordance with the Grievance Procedure.

FOR THE EMPLOYEE:

(SGD.) D. E. McAVOY
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Bazin	– Counsel, Montreal
G. A. Dolliver	– Superintendent, Train Movement, Sept-Îles
C. Nobert	– Assistant – Labour Relations, Sept-Îles

And on behalf of the Brotherhood:

D. E. McAvoy	– General Chairman, Montreal
L. J.Davies	– Vice-President, Montreal
R. A. Smith	– Local Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

The matter of overtime is dealt with in Article iv of the collective agreement, of which section 4.01 and 4.02 are material to this grievance. Those sections are as follows:

Article IV – Overtime and Through Mileage

4.01 a) On runs of one hundred and twenty-eight (128) miles or less, overtime will begin at the expiration of eight (8) hours on duty. Payment will be made for hours on duty or miles run whichever is the greater.

b) On runs of more than one hundred and twenty-eight (128) miles, overtime will begin when the time on duty exceeds the miles run divided by twenty (20) excluding initial and final terminal time. Payment shall be made for hours on duty or miles run whichever is the greater.

c) In express train service and mixed service, on runs of more than one hundred and twenty-eight (128) miles, overtime will be paid when the time on duty exceeds the miles run divided by twenty-five (25) excluding initial and final terminal time. Payment shall be made for hours on duty or miles run whichever is the greater.

4.02 Overtime shall be paid for on the minute basis at the overtime hourly rate provided except that locomotive engineers in work train service shall be paid double time after twelve (12) hours on duty.

The case was presented in terms of a particular example, which it will be convenient to consider here, and which is a sufficient illustration of the problem. On October 1, 1976, Engineman G.E. Eastman was in Work Train service. His time on duty was 04.30, and his time off duty 21.45. During that time he worked between Shabo and Mai, and his mileage run was 135.

It is common ground that this was a run of more than 128 miles so that overtime would begin pursuant to Article 4.01(b). It is agreed that according to that formula, overtime would begin, in Engineman Eastman's case, after he had been on duty for six hours and forty-five minutes. Article 1.01 sets out the effective straight time hourly rate as $7.68. Application of this rate to the period of time for which it was payable on October 1 yields an amount of $51.84. This is, it may be noted, the amount which would have been payable for a run of 108 miles. Of course we know that Engineman Eastman's run was greater than that, and was in excess of 128 miles. That is why he was entitled to overtime when he was, had his run been less than 128 miles, he would not have been entitled to overtime until after eight hours. He would, of course, be entitled to the benefit of Article 39.01, and guaranteed a basic day, which, by Article 2.02, is 128 miles. As will be seen, Engineman Eastman did make that guarantee on the day in question. There is, however, no direct relationship between the basic day and the calculation of that portion of Engineman Eastman's earnings which were payable at straight time on the day in question.

Overtime began for Engineman Eastman, then, after six hours and forty-five minutes. By Article 4.02, he was entitled to payment thereafter on a minute basis. The hourly rate for such payment is set out in Article 1.01, and at the time in question was $11.52. That is the rate which was payable in respect of Engineman Eastman's time on duty in excess of six hours and forty- five minutes that day. Article 4.02, however, sets out this exception: that locomotive engineers in work train service – that is Engineman Eastman's case – shall be paid double time after twelve hours on duty. Thus, the rate of $11.52 was payable from the time Engineman Eastman had been on duty six hours and forty-five minutes until the time he had been on duty for twelve hours, thereafter, the rate of $15.36 being double time, was payable.

Applying these rates to the appropriate periods of time, Engineman Eastman's earnings at time and one-half were $60.48, and his earning at double time were $80.64. His total earnings for the day were $192.96. Applying his rate per mile of $0.4798, that is the amount he would have earned in respect of a run of 402 miles. There is thus no question of his not making the 128-mile guarantee.

The Company appears to have calculated Engineman Eastman's earnings for the day in the manner outlined above, which appears to me to be correct. There is no occasion, in this case, to consider the negotiating history of Article 4.02. Whatever may have been said or thought during the negotiations, Article 4.02 appears to me to be clear,

and is to be applied as it stands. That was done in this case: overtime was paid on the minute basis and after twelve hours, double time was paid. The restatement of the earnings in terms of equivalent miles makes it apparent that the basic day guarantee was met.

In the correspondence relating to this grievance the Union alleged, *inter alia*, that the Company had deleted Article 4.01(b) and that it had changed the application of Article 4.02, which should apply regardless of miles run. The Company, at one point, advised that "Enginemen cannot claim part of a ticket under one article and the balance under a second article". With great respect, none of these views is correct. It may well be that more than one article applies in respect of all or part of any wage claim, as here, for example, where Articles 1.01, 4.01(b), 4.02 and 39.01 are all applicable, and were all satisfied. The Company could not, of course, delete any provision from the collective agreement, and it did not purport to do so. Article 4.01(b) was applied, and so was Article 4.02, in accordance with its clear terms.

For all of the foregoing reasons, the grievance must be dismissed.

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