CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 620

Heard at Montreal, Wednesday, June 15, 1977

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Interpretation of the articles 4.01 B and 4.02 of the collective agreement for payment of overtime for work train service.

JOINT STATEMENT OF ISSUE:

On October 1, 1976, conductor J. Robitaille was in work train service and ordered at Shabo at 4.30 hours. He came off duty at Mai the same day at 21:45 hours. The Union claims that conductor J. Robitaille should have been paid 429 miles according to article 4.01 B and 4.02.

The Railway maintains that his tours of duty should have been paid according to article 4.02 of the collective agreement which specifies overtime payment for work train service. Therefore, the Railway paid 392 mile for such trip.

FOR THE EMPLOYEE:

(SGD.) G. ROBICHAUD
VICE-CHAIRMAN

FOR THE COMPANY:

(SGD.) F. LEBLANC
SUPERINTENDENT, LABOUR RELATIONS

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:

R. Cleary – Counsel, Montreal
G. Robichaud – Vice-Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

The facts in this case are virtually identical to those in **Case** **No. 619**, although this case involves a Conductor, and comes under a different collective agreement. The run was the same, and the material provisions of this collective agreement are (except) as will be noted below), essentially the same as those of agreement in **Case No. 619**.

On October 1, 1976, Conductor Robitaille was in work train service. His time on duty was 04.30 and his time off duty 21.45. During that period of time he worked between Shabo and Mai, a distance of 135 miles. By article 4.01(b) – and the same appears from the "second scale" set out at p.71 of the collective agreement – overtime commenced, on Conductor Robitaille's run that day, at six hours and forty-five minutes.

The matter of overtime is dealt with in Article IV of the collective agreement. A very similar provision was set out in **Case No. 619** and I shall set out here the French version of the clause in this collective agreement, for purposes of comparison:

Article IV – Heures Supplémentaires – Millage Supplémentaire

4.01 a) *Sur les parcours de cent vingt-huit (128) milles ou moins, les heures supplémentaires compteront des l'expiration de huit (8) heures en service. Le paiement se fera pour les heures en service ou les milles parcourus, selon le montant le plus élevé.*

b) *Sur les parcours de plus de cent vingt-huit (128) milles, les heures supplémentaires compteront à partir du moment ou la durée du travail dépassera le millage parcouru divise par vingt (20) excluant le temps de manoeuvres initial et final. Le paiement se fera pour les heures en service ou les milles parcourus, selon le montant le plus élevé.*

c) *Dans le service du train de voyageurs et mixte, sur les parcours de plus de cent vingt-huit (128) milles, les heures supplémentaires compteront à partir du moment ou la durée du travail dépassera le millage parcouru divise par vingt-cinq (25), exculant le temps de manoeuvres initial et final. Le paiement se fera pour les heures en service ou les milles parcourus, selon le montant le plus élevé.*

4.02 *Les heures supplémentaires seront payées à la minute, au taux horaire prévu pour les heures supplémentaires excepte que les agents de train en service sur les trains de travaux seront payés temps double après douze (12) heures de service.*

It is agreed that straight time was payable in respect of the first six hours and forty-five minutes of Conductor Robitaille's run. Applying his applicable rate of $6.85 to that time, he was entitled to $46.24 in respect thereof.

It is clear from Article 4.02 that overtime is payable on a minute basis, at the applicable rate. The applicable overtime rate for Conductor Robitaille was 10.28. He would be entitled to apply that rate to all time in excess of six hours and forty-five minutes that day, except that Article 4.02 goes further, and provides that after twelve hours he would, as an employee in work train service, be entitled to double time after twelve hours.

It follows that Conductor Robitaille was entitled to payment at a rate of $10.28 for the time from six hours and forty-five minutes until twelve hours, that is, for five hours and fifteen minutes. This amounts to $53.97 in respect of that period. Thereafter, he was entitled to double time so that in this case he would be paid at a rate of $13.70 for a period of a further five hours and fifteen minutes. This amounts to $71.93 for that period. His total earnings in respect of the total of seventeen hours and fifteen minutes were $172.14.

This amount of $172.14, is the equivalent of the amount which would be paid for a run of 402 miles at the applicable mileage rate. In **Case No. 619**, it was found that such payment met the requirements of the guarantee provisions in that collective agreement. There, the guarantee was of "one basic day for each and every day held or available for duty". In this case, however, Article 39.01 is as follows:

39.01 *On garantit aux agents en service sur les trains de travaux un minimum de cent vingt-huit (128) milles ou de huit (8) heures par jour (y compris les dimanches et jours feriés), à l'exclusion des heures supplementaires. Lorsque travaillant avec l'auxiliaire, ils seront payés les taux de train de travaux.*

By this provision, overtime is not considered in determining whether the guarantee has been met. On the facts in this particular case, overtime became payable after six hours and forty-five minutes. The straight time payment made to Conductor Robitaille in respect of that period was the equivalent of 108 miles. By Article 39.01 of this collective agreement, however, he would be entitled to a minimum of 128 miles for that period – that is, for the time on duty excluding overtime.

It is agreed that the mileage equivalents of the payments made at time and one-half and at double time, that is 126 and l68 miles respectively, are correct, and I would agree. The total mileage thus credited by the Company was 402. The amount allowed exclusive of overtime was 108 and that amount should, in order to meet the requirements of the guarantee, be increased to 128, so that the total mileage payable for the day would be 422.

It was argued by the Union that Article 2.02 of the collective agreement, which defines the basic day, was in some degree ambiguous, in that the two versions were not the same. In its French version, Article 2.02 is as follows:

> ***2.02*** *En service de ligne, une journée de base comporte sait un parcours de cent vingt-huit (128) milles ou moins soit huit (8) heures de travail ou moins. Le parcours au delà de cent vingt-huit (128) milles sera payé aux taux de millage prévus.*

The English version is as follows:

> ***2.02*** *In all road service, one hundred and twenty-eight (128) miles or less, eight (8) hours or less shall constitute a basic day. Miles in excess of one hundred and twenty-eight (128) miles will be paid for at the mileage rates provided.*

Considering either of these clauses as a translation of the other, they may not be considered entirely satisfactory. "*Le parcours au delà de cent vingt-huit (128) milles*" may not be considered the precise equivalent of "Miles in excess of one hundred and twenty-eight (128) miles". However the matter may be looked at as a translation from one language to the other, it is my view that we have two versions of the same clause. Either may be considered as governing the situation and it is often helpful, for purposes of construction, to have regard to both. Each should be read, if it is possible to do so, as giving expression to the same intention. I have no difficulty in comprehending the intention of Article 2.02 in this case. The 128 miles, said to constitute a basic day, is of course the same amount as that referred to in Article 39.01 setting out the guarantee. Article 39.01, however, does not speak of a "basic day" (in either version) and there is no need to have regard to Article 2.02 in order to apply Article 39. In **Case No. 619** it was necessary to consider the basic day provision, since the guarantee there was in terms of a "basic day" and not in terms of miles.

In the instant case, while it is not necessary to consider Article 2.02 in order to give effect to Article 39.01, which is sufficient in itself (and whose effect, in this particular case, is to increase the number of miles for which Conductor Robitaille is to be credited for the straight- time portion of his tour of duty from l08 to 128), Article 2.02 is nevertheless of general application. It states that a basic day is of 128 miles. In the instant case the grievor's run was in excess of that, it was a run of 135 miles as we have seen, so that the second sentence of Article 4.02 applies. In the circumstances, this requirement is met by the application of the particular language of Articles 4.01(b) and 4.02. Those articles apply in the manner set out above. It is true that, in making the calculation of when overtime begins, and the same appears on the "second scale", overtime begins at six hours and forty-five minutes 135 miles are run. The grievor's run in this case was 135 miles, and the parties are agreed that overtime would commence at six hours and forty-five minutes. That does not, however, permit the conclusion that for the straight-time portion of his tour of duty the grievor was entitled to payment for 135 miles. His earnings for that portion were, as I have said, 108 miles, which must be increased to 128 pursuant to Article 39.01. Except for the application of the guarantee provision, what is said in **Case No. 619** applies equally here.

For the foregoing reasons the grievance is allowed in part. The grievor, in the case given as an example, should be paid the equivalent of 422 miles for the day in question.

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