CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE N0. 639

Heard at Montreal, Tuesday, November 8,1977

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor A.G. Stacey and crews, Winnipeg, that the rate of pay for time held at other than their home terminal in accordance with the first paragraph of Article 15, should include any car step-up rate applicable to the last train on which they worked.

JOINT STATEMENT OF ISSUE:

On July 4, August 26 and November 2, 1976, Conductor A.G. Stacey and crew, working in unassigned through freight service, handled trains of 90, 102 and 102 cars respectively from Winnipeg to Brandon. For these trips, they were paid the through freight rate increased by the applicable car step-up rate provided in Article 11, Clause (b) which reads as follows:

> Basic rates in all train service, other than passenger, shall be increased according to the maximum number of cars, including caboose, hauled in trains at any one time on a road trip anywhere between initial starting point and point of release as follows:
>
> Effective January 1, 1976
>
> 81 to 100 cars ... 22 cents per 100 miles. Add 22 cents for each additional block of 20 cars or portion thereof.
>
> Effective January 1, 1977
>
> 81 to 100 cars ... 24 cents per 100 miles. Add 24 cents for each additional block of 20 cars or portion thereof.

After each such trip, Conductor Stacey and crew were held at Brandon, the away-from-home terminal, in excess of 14 hours and submitted claims for the time so held on July 5, August 26 and November 2, l976, in accordance with the first paragraph of Article 15 which reads as follows:

> Trainmen in pool freight and in unassigned service held at other than home terminal longer than fourteen (14) hours without being called for duty will be paid on the minute basis at 12 and one-half miles per hour at the rate of class of service last performed for all time held in excess of fourteen (14) hours except that in cases of wreck, snow blockade or washouts on the subdivision to which assigned trainmen held longer than fourteen (14) hours will be paid for the first eight (8) hours or portion thereof in each subsequent twenty-four (24) hours thereafter. Time will be computed from the time pay ceases on the incoming trip until the time pay commences on the next outgoing trip.

Payment was claimed on the basis of a rate of pay which included the appropriate car step-up rate earned by this crew on the incoming trip due to the number of cars handled on those trains.

The Company reduced the claims by the amount of the car step-up rate to the basic through freight rate contending that the class of service last performed was through freight service and that the car step-up premium cannot be included in claims for time held at other than home terminals as train service is not performed during the period of time that Trainmen are held at other than home terminal.

The Union contends that Conductor A. G. Stacey and crew are entitled to payment as claimed as the rate of class of service last performed includes the car step-up rate.

FOR THE EMPLOYEES:	**FOR THE COMPANY:**
(Sgd). P. P. BURKE	**(Sgd.) R. J. SHEPP**
GENERAL CHAIRMAN	**GENERAL MANAGER, OPERATION & MAINTENANCE**

There appeared on behalf of the Company:

F. B. Reynolds – Assistant Supervisor Labour Relations, Winnipeg
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Brotherhood.

P. P. Burke – General Chairman, Calgary

AWARD OF THE ARBITRATOR

It is clear that the grievor was entitled to payment pursuant to Article 15, "held at other than home terminal", on the occasions in question. What is in issue is the rate of payment to which he was entitled.

Under Article 15, the grievor was entitled to be paid "on the minute basis at 12 and one-half miles per hour at the rate of class of service last performed formed" for his time held in excess of fourteen hours. There is no question but that he was entitled to payment for each minute held in excess of fourteen hours, and that this was applicable at 12 and one-half miles per hour. What is in dispute is what was "the rate of class of service last performed".

The "service last performed" was on the grievor's incoming trip which was in through freight service. The "class of service" was thus through freight service. There is a rate for such service set out in the collective agreement, and it was this rate, at 12 and one-half miles per hour, which was paid for each minute the grievor was held in excess of fourteen hours.

In fact, however, the rate payable to the grievor in respect of his incoming trip was increased from the basic rate for through freight service according to the number of cars hauled, pursuant to Article 11(b). That article provides that the basic rate shall be increased according to the maximum number of cars hauled.

It is, then, the Union's contention that the "rate of class of service last performed" by the grievor was the basic rate for through freight service increased by the car step-up rate provided for in Article 11(b). The Company, on the other hand, said that it is the basic rate set out in Article 11(a) which is to be applied, without consideration of any special circumstances which may have augmented the rate payable to the grievor on his incoming trip.

The Union referred to a number of cases dealt with by the **National Railroad Adjustment Board** involving the application of the phrase "regular rate per hour paid … for the last service performed". The gist of the decisions in those cases is that what is referred to is the actual payment to the employee, described in terms of an hourly rate. Even where the employee, having worked very few hours, claims under a guarantee, the rate per hour is determined by dividing the amount paid by the hours worked. There appears to be a line of decisions adopting that interpretation of the language there in question.

In the instant case, however, the language used in the collective agreement is quite different. Until June 1971, the collective agreement had provided for payment for time held at other than home terminal at a rate of 1/8 of "the daily rate paid them for the last service performed". On the basis of this language it seems to have been admitted that the actual rate, inclusive of increments, paid to the employee for his last service was to be the rate used for held-away-from-home-terminal payments. Thus, a result like that in the National Railroad Adjustment Board cases was reached.

Since June, 1971, however, the collective agreement has read as it now does. If it were not for Article 11(b), it would be quite clear that "the rate of class of service last performed", referred to in Article 15, is simply the basic rate of the class of service in which the employee last worked. In the instant case, that would be the basic rate for through freight service, which is the rate the Company used in calculating the grievor's payment. Article 11(b), however, provides that in certain circumstances the basic rate is to be increased. Those circumstances obtained during the grievor's last service prior to being held away from home terminal, so that he was paid at that increased rate for the service last performed. The question is whether "the rate of class of service last performed", in Article 15 means the rate for that class of service increased pursuant to Article 11(b).

In my view, there is an analogy to be drawn between the problem in this case and that which was before me in **Case No. 343**. There there was a claim for statutory holiday pay. The collective agreement provided for holiday pay equal to "the regular day's pay of the job to which he is assigned." It was held that this was a reference to the employee's classification, and that a shift premium, payable "for hours worked" should not be considered part of the holiday pay, even though the employee received that premium when he did in fact work on the holiday. In the instant case, on the grievor's "service last performed", he was entitled to an increase in the basic rate by reason of the number of cars hauled. That was a premium relating to the actual work performed. It did not involve a permanent alteration in the grievor's basic rate, but simply an increase to it in respect of that particular trip. In my view, where Article 15 refers to the "rate of class of service last performed" it refers to the regular basic rate for such service and does not contemplate any increases which may have been made in respect of the actual work performed. It is the rate of the "class" of service which is referred to, and that rate appears clearly in Article 11(a).

For these reasons, it is my conclusion that the car step-up rate does not form part of the "rate of class of service last performed" referred to in Article 15. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR