

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 644

Heard at Montreal, Tuesday, December 13, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer R. Barr, Regina, Saskatchewan, November 3, 1976.

JOINT STATEMENT OF ISSUE:

On November 3, 1976, Locomotive Engineer R. Barr was called soon as possible in unassigned work train service to go to Mileage 81.5, Qu'Appelle Subdivision, with road repair car and crew account loaded car CN 193000 had derailed due to a burnt journal. After CN 193000 was repaired and rerailed, this car along with 20 empty cars, all of which had been set off on main line by through freight train no. 488, were handled by the work train assignment to its initial terminal of Regina.

For this tour of duty from Regina to Mileage 81.5 and return, a total distance of 28 miles involving 6 hours and 35 minutes on duty, Locomotive Engineer Barr claimed 172 miles at through freight rates and conditions. The Company allowed payment on the basis of 103 miles at work train rates and conditions.

The employee subsequently submitted a grievance for payment of 69 miles at through freight rates of pay, being the difference between the miles claimed and the miles paid. Payment was declined by the Company and the Brotherhood contends that in refusing to make payment as claimed, Paragraph 76.1, Article 76 of Agreement 1.2 was 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	– Senior System Labour Relations Officer, Montreal
J. A. Cameron	– Regional Labour Relations Officer, Winnipeg
J. H. Meneer	– Labour Relations Assistant, Winnipeg
R. E. Mackinnon	– Superintendent, Winnipeg
D. I. Small	– Assistant Superintendent, Winnipeg

And on behalf of the Brotherhood:

A. J. Speare	– General Chairman, Edmonton
E. J. Davies	– Vice President, Montreal
M. Prystaylo	– Local Chairman, Winnipeg
J. Ball	– Local Chairman, Regina

AWARD OF THE ARBITRATOR

Article 76 of the collective agreement is one of the general provisions found in section 5 of the agreement. It is, in its entirety, as follows:

Article 76 – Short Runs

76.1 On short runs where the mileage of round trips is 50 miles or less, 100 miles and terminal switching will be paid, also overtime. This paragraph does not apply to locomotive engineers in Short Turn-Around Service under Article 9 and Road Switcher Service under Article 23.

76.2 All other short runs will be paid on the basis of 100 miles one way and mileage and terminal switching the other way, except in cases where overtime is made in either direction, when such overtime will be paid.

76.3 When the mileage of the round trip exceeds 50 and is less than 80 miles in one direction the provisions of Article 9 will apply in Passenger service.

76.4 If a locomotive engineer is ordered out on another short run or runs, and such run or runs are completed within 24 hours from the time he was first ordered, he will be paid actual mileage and terminal switching, plus overtime. This paragraph applies to continuous service.

76.5 This article does not apply to work train service.

From the mileage involved it is clear that the run in question could be described as a “short run”. If Article 76 applies, then Engineman Barr’s claim would appear to be justified. It is the Company’s contention, however, that Engineman Barr was in work train service on the run in question, and if that is correct, then, by Article 76.5, Article 76 does not apply, and the matter would be governed by the work train service provisions set out in Section 4 of the collective agreement.

The issue is therefore one of determining, as a matter of fact, whether or not the run in question was in work train service. The operation of train No. 488 was itself an operation in through freight service. The run there involved was one from Melville to Regina. It was interrupted at Mileage 81.5 by the derailment of one of its cars, some 14 miles from its destination of Regina. Since the entire train could not proceed, the disabled car (and, accordingly, all behind it), was cut off and the front portion of the train proceeded to Regina. This left the main line blocked by the disabled car and the remainder of the train.

A “work train” was then ordered from Regina to proceed to Mileage 81.5 to make repairs and clear the track. The grievor was engineman for this train. The train proceeded from Regina to Mileage 81.5, work was performed in changing the wheels of the disabled car and rerailling it (a matter of some 3 hours and 50 minutes) and then the rear portion of train No. 488 was brought in to Regina, freeing the main line.

While the task of the train here in question included hauling the rear portion of train No. 488 to Regina, its overall and basic task was to reraill the disabled car and to clear the main line. It needs no precise definition of “work train service” to permit the conclusion that such tasks – dealing with disabled cars or line blockages – are generally within the scope of “work train service”, as opposed to “passenger service”, “freight service” or “yard and transfer service”, being the other types or “service” for which the collective agreement sets out the terms and conditions.

In most cases a disabled or wrecked car will have formed part of a passenger, freight or yard service train (although of course work train cars may themselves become disabled). A work train sent out to deal with such a car does not thereby become some other sort of train because the car with which it deals was part of such a train. It remains a work train until the completion of its trip in that service. This is so even where, as an incident of its work, it hauls portions of a train which is in passenger, freight or yard service.

In the instant case it is clear to me from all of the circumstances that, viewed as a whole, Engineman Barr’s tour of duty on this occasion was one in work train service. Accordingly, the provisions of Article 76 do not apply, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR