CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 645

Heard at Montreal, Tuesday, December 13, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Alleged violation of Article 110 of Agreement 1.2 when way freight assignment operated out of Estevan, Saskatchewan, was abolished.

JOINT STATEMENT OF ISSUE:

Effective July 3 , 1977, the way freight assignment with Estevan as the designated home terminal was terminated and its work was performed by freight pool crews operating out of Brandon, Manitoba.

The General Chairman submitted a grievance contending that Article 110, paragraph 110.1, sub-paragraph (a) of Agreement 1.2 had been violated by the Company when it re-assigned this work.

The grievance was declined by the Company.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) A. J. SPEARE	(SGD.) S. T. COOKE
GENERAL CHAIRMAN	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 110.1 (a) of the collective agreement is as follows:

> **110.1** Prior to the introduction of run-throughs or changes in home stations, or of material changes in working conditions which are to be initiated solely by the Company and would have significantly adverse effects on locomotive engineers, the Company will:
>
> **(a)** negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measures shall not include changes in rates of pay.

In considering the applicability of this provision to the circumstances of the instant case, paragraphs (i) and (j) of Article 110.1 are also relevant. They are as follows:

> **(i)** The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 110 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which locomotive engineers are engaged.
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> **(j)** The applicability of this Article 110 to run-throughs and changes in home stations is acknowledged. A grievance concerning the applicability of this Article 110 to other material changes in working conditions may be processed immediately to Step 3 of the Grievance Procedure as indicated in paragraph 113.1, but shall be presented to the General Manager within 60 days from the date of the cause of the grievance.

It is unlikely that the termination of any assignment of this type would, as such, invoke Article 110.1. In this case, however, it is said that the real effect of the termination and re-assignment of the work was such as to change a home station and so to invoke the article.

Prior to July 3, 1977, and until June 30th of that year, train No. 831 had serviced the Lampman subdivision from Estevan to Maryfield, and part at least of the Northgate subdivision to Domex. The home terminal for this train was Estevan, and the home station (that is the headquarters from which relief was furnished) was Regina. On June 30, 1977, train No. 831 was discontinued and effective July 3 of that year locomotive engineers assigned to pool service at Brandon were to perform the work required between Brandon and Estevan, including the servicing described above on the Lampman subdivision, and including as well work on the Northgate subdivision to Domex. The effect of this, from the point of view of assignment of employees, was that there was a change of home station, in that relief would henceforth be furnished from Brandon rather than from Regina.

On June 1, 1976, the Company had notified the Brotherhood of a proposed change in the home terminal of train No. 831 from Estevan to Brandon. In substance, this was a notice of the change which is described in the preceding paragraph of this award. In form, the change was somewhat different, since train No. 831 was discontinued. The fact is, however, that the home station from which relief is to be drawn for this work – and the work, although diminished in volume, continues – is now Brandon rather than Regina. Negotiations were conducted pursuant to this notice, but were not successful. The Company now takes the position that such notice was not necessary, and that no notice under Article 110.1 is required in respect of the change which has occurred.

I agree with the Company that it is not bound by the fact that it did give the earlier notice with respect to this change. By the same token, the Union is not bound by its failure to object to earlier changes which had occurred on the territory in question. The issue now before me is simply whether the change which has been described is one for which notice ought to have been given pursuant to Article 110.1.

From the foregoing, it should be clear that what took place involved, among other things a “change in home stations”, and from the material before me it appears that this would have significantly adverse effects on locomotive engineers at Regina. It would appear, then, generally to be the sort of change of which notice should be given pursuant to Article 110.1. It further appears that the change was, in general, a result of “a decline in business activity” so that it might be thought not to come under Article 110 by reason of the exception set out in Article

110.1(i). On the other hand, since it involves, as I find, a "change in home stations" it is the sort of matter specifically referred to in Article 110.1(j) as being a case to which Article 110 applies.

In **Case No. 332** it was held that a situation involving a change of home terminal was one which occurred in the course of "normal changes inherent in the nature of the work in which employees are engaged". The nature of the circumstances does not appear from the award, and there is no discussion of any article which might have been equivalent to Article 110.1(i).

In the instant case, it is my view that the provisions of Article 110.1(j) must prevail. That article specifically provides for the application of Article 110 in cases of change of home station. The exception set out in Article 110.1(i) is not an exception to Article 110.1(j) but rather a general type of exception which must be read in its context, and which does not, in my view, detract from the specific provision of Article 110.1(j).

For the foregoing reasons, it is my conclusion that this was a situation in which notice pursuant to Article 110 ought to have been given and negotiations held. Accordingly, the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR