CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 887

Heard at Montreal, Tuesday, November 10, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineers D.D. Haight and H.M. Myhr in the amount of 100 miles at passenger rates of pay for setting off Private Car *Pacific* on the business car track at Sarnia January 15, 1979.

JOINT STATEMENT OF ISSUE:

On January 15, 1979, Locomotive Engineers D.D. Haight and H.M. Myhr were called for Train No. 86 Sarnia to Toronto on duty at 1155 hours. After they reported for duty, they were instructed, as is normal procedure, to turn Train No. 86 on the wye and then spot Private Car *Pacific*, which was in the consist, on the business car track. Train No. 86 then departed Sarnia.

Locomotive Engineers D.D. Haight and H.M. Myhr submitted claim in the amount of 100 miles at passenger rates under Article 13.1 of Agreement 1.1.

The Company declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. M. MANDZIAK	(SGD.) G. E. MORGAN
GENERAL CHAIRMAN	DIRECTOR LABOUR, RELATIONS

There appeared on behalf of the Company:

R. Birch	– Manager, Labour Relations, Montreal
M. Delgreco	– Regional Labour Relations Officer, Toronto
P. L. Ross	– Coordinator Transportation - Special Projects, Montreal
D. D. Davidson	- Assistant Superintendent, London

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, Toronto
C. R. Downey	– First Vice-General Chairman, Toronto.

AWARD OF THE ARBITRATOR

Article 13.1 of the Collective Agreement is as follows:

> **13.1** Locomotive engineers used out of or at initial or final terminal to perform service other than that in connection with their train, before commencing or after completing trip, will be allowed a separate day for such work. It is understood on branch runs, or at terminals where no yard engine is on duty, road locomotive engineers may be required to do yard passenger switching, and will be considered as in continuous service.

The question in the instant case is whether or not the service performed at Sarnia was service "in connection with" the grievors' train. If it was not, then the grievance succeeds and the grievors are entitled to "a separate day" in addition to their regular payment for the day in question. If the service performed was "in connection with" their train, then the grievance fails.

The engine or engines and cars which the grievors took out as Train No. 86 arrived in Sarnia as Train No. 81. Train No. 81 differed in its consist, in that private car *Pacific* was part of Train No. 81, and not part of Train No. 86. The incoming crew, it would appear, left their train as it had come in. The grievors were required to turn the train on the wye, and to spot the private car, before departure. They were paid, of course, in respect of the time involved.

This was not a situation to which the second sentence of Article 13.1 applied, and the grievors could not have been required to do "yard passenger switching" in general. They were, however, properly required to do work "in connection with" their train. The expression used is a rather broad one, and does not lend itself to precise definition. The decision in the instant case, therefore, should be taken as applying only to the particular fact-situation involved.

The setting-off of a car or perhaps cars or, in an appropriate case, the changing of an engine, may well be work "in connection with" a particular train. A "train" may include cars not intended for the destination, and may include bad-order cars which would have to be set off. This is not to say that work "in connection with" a train would properly include the switching of numbers of cars from different tracks in order to put together the consist of engines and cars which will later become the train. In the instant case, there would appear to be no doubt that the crew of the incoming Train No. 81 could, under Article 13.1 have been required to set off the private car (which would then no longer be a part of the train), and they would be paid for such work as part of their final terminal time. It would, in my view, have been work "in connection with" their train. Where, for whatever reason, the Company does not require that work to be done when the train arrives, but requires it to be done before the bulk of the same car and engine consist goes out as another train, there is no significant change in the character of the work to be done. This particular work was as much "in connection with" Train No. 86 as it would have been in connection with Train No. 81. The grievors were not entitled to an extra day by virtue of having performed this work.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR