

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 935

Heard at Montreal, Wednesday, April 14, 1982

Concerning

### CANADIAN NATIONAL RAILWAYS

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Claim of Locomotive Engineer G.S. Jasper of Regina, Saskatchewan March 9, 1981.

#### **JOINT STATEMENT OF ISSUE:**

On March 9, 1981, Locomotive Engineer G.S. Jasper handled assigned freight trains 568-569 from Regina to Moose Jaw and return. He reported for duty at 1030 hours, departing at 1130 hours and arrived at Moose Jaw at 1550 hours. After advising the Conductor of his train, he left his assignment at 1615 hours and proceeded to a restaurant to eat. He returned at 1700 hours and completed his assignment, departing Moose Jaw at 1840 hours and went off duty at Regina at 2030 hours.

Upon submission of his time return for March 9, 1981, the Company disallowed the time he was absent to eat from 1615 hours to 1700 hours. The Brotherhood contends that in refusing to allow payment, as claimed, Paragraph 11.2 of Article 11, Paragraph 20.2 of Article 20 as well as Paragraph 53.1 of Article 53, as contained in Agreement 1.2, were violated by the Company.

#### **FOR THE EMPLOYEES:**

**(SGD.) A. JOHN BALL**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) G. E. MORGAN**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows – Manager, Labour Relations, Montreal  
P. L. Ross – Coordinator Transportation – Special Projects, Montreal  
S. A. MacDougald – Labour Relations Assistant Operation, Winnipeg  
L. E. Viala – Assistant Superintendent, Regina

And on behalf of the Brotherhood:

A. J. Ball – General Chairman, Regina

## AWARD OF THE ARBITRATOR

Article 11.2 provides for the payment of locomotive engineers in freight service for time at terminals and turnaround points. Moose Jaw was a turnaround point for the grievor, and he was entitled to payment at the rate specified "from time of arrival until departure at outer switch". That is the general provision for payment for "detention and switching".

Article 20.2 provides that locomotive engineers in road service will have the opportunity of having meals at a reasonable hour by previously advising the dispatcher. This is not a provision for a paid meal period, but it may be noted that it does not appear to contemplate deduction from wages (calculated, it may be, on a mileage basis) in respect of time taken to eat. In the instant case, the grievor did not advise the dispatcher that he was taking time to eat, nor that he was leaving the premises to do so.

Article 53 deals with the union's rights of representation. It has no application in this case, and has not been violated, as the reasons given in **Case No. 846** make clear.

The grievor made no effort to arrange what might have been a convenient time to eat. He simply left the premises, and on the material before me this absence led directly to a delayed departure of his train, that is, to its leaving later than it would otherwise have done. Such time did not, in these circumstances, constitute part of the "detention and switching" time for which he would be entitled to payment. While the grievor would of course be expected to eat, nothing in the collective agreement requires that he be paid for the time taken to do so, in circumstances such as these.

Accordingly, the grievance must be dismissed.

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