

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 959

Heard at Montreal, Tuesday, June 8, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer R.A. Milling of Winnipeg for yard shift differential and extra diesel units pay June 30, 1981.

JOINT STATEMENT OF ISSUE:

On June 30, 1981, Locomotive Engineer R.A. Milling worked through freight assignment handling Train No. 848 from Brandon to Winnipeg, Manitoba. Train 848 was ordered for 1645 hours and departed outer switch at 2235 hours, arriving Winnipeg (Symington) at 0320 hours.

For this tour of duty, Locomotive Engineer Milling claimed and was paid 256 miles of which 73 miles, initial terminal delay from 1645 hours to 2235 hours (5 hours, 50 minutes), were paid at yard rates. In addition, he claimed payment for shift differential and extra units allowance for the 5 hours and 50 minutes initial terminal delay.

The Company declined payment of the additional payment and the Brotherhood subsequently progressed a grievance contending that in refusing to make payment as claimed, the provisions of Paragraphs 36.2 and 36.3 of Article 36, Agreement 1.2 were violated by the Company.

FOR THE EMPLOYEES:

(SGD.) A. JOHN BALL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. E. MORGAN
FOR VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows – Manager, Labour Relations, Montreal
M. Proulx – Labour Relations Assistant, Winnipeg

And on behalf of the Brotherhood:

A. J. Ball – General Chairman, Regina

AWARD OF THE ARBITRATOR

On the day in question the grievor was ordered for Train No. 848 in unassigned road freight service. Section 1 of the Collective Agreement (Articles 1 to 35) governed the wages and conditions of the grievor's work. Section 2 of the Collective Agreement (Articles 36 to 52) deals with yard and transfer service.

Article 11 of the Collective Agreement provides for payment for detention and switching time at initial terminals for employees in road service, Articles 11.2 and 11.3 dealing particularly with freight service. Article 11.3 is as follows:

11.3 Locomotive engineers required to perform yard work at any one yard in excess of five (5) hours in any one day will be paid at yard rates per hour for the actual time occupied. Time paid under this paragraph will be in addition to payments for road service and may not be used to make up the basic day.

The grievor, as appears from the Joint Statement, performed yard work at the initial terminal for some five hours and fifty minutes prior to departure on his run. This is a situation to which Article 11.3 applied, and the grievor was entitled to be paid "at yard rates per hour" for the actual time occupied by such work.

The yard rates are of course set out in Section 2 of the Collective Agreement, and in particular in Article 36.1, which sets out the daily rate of pay in effect at any given time during the life of the Collective Agreement. The grievor was in fact paid for his yard work on the day in question in accordance with that provision. That is, he was paid for five hours and fifty minutes at yard rates by virtue of Article 11.3 and (in order to give effect to Article 11.3), by virtue of Article 36.1 and the rates of pay set out therein. It may be noted that by virtue of Article 11.4, time paid under Article 11.3 is in addition to payment for road service, and may not be used to make up the basic day.

It is the Union's contention that the grievor should also have been paid the additional unit allowance provided for by Article 36.2 and the shift differential provided for by Article 36.3. Such payments are not, however, ones to which road service employees are entitled. They are provided for in that section of the Collective Agreement dealing with yard and transfer service, and the grievor was not in yard and transfer service. He was, at all material times, in road service. Of course, the grievor spent a substantial period of time during his tour of duty performing yard work. The road service provisions of the Collective Agreement contemplate such a situation, and provide extra payment for it, as has been shown. Where, as here, such work is performed for more than five hours in a day, then the employee is to be paid, in addition to the payments to which he is otherwise entitled in connection with his run, "at yard rates per hour for the actual time occupied". That does not make the employee a yard service employee. On the contrary the extra payment is made pursuant to Article 11.3, which is in the road service section of the Collective Agreement. The precise rate to be paid is determined by reference to Article 36.1, but the status of the employee is not changed, and he does not thereby become entitled or required to be treated as a yard service employee nor do the yard service provisions apply generally to him.

The Collective Agreement provides, in circumstances such as these, for an extra payment at yard rates per hour for actual time. It does not provide for payment of an additional unit allowance or of a shift differential, to road service employees. Accordingly, it must be concluded that the grievor was properly paid on this occasion, and the grievance must be dismissed.

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