

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1020

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EX PARTE

DISPUTE:

BROTHERHOOD:

This concerns a claim for five minutes wages at the British Columbia rate of pay in the name of mileage rated vehicleman, K. Sargent, Calgary – Golden Route, for each trip since December 20, 1981, for time spent conducting British Columbia Provincial Government Mandatory brake safety checks on his tractor and trailer units at the top of the Ten Mile Hill east of and prior to proceeding down hill into Golden, British Columbia.

COMPANY:

This is a claim for five minutes wages at the British Columbia rate of pay in the name of mileage-rated vehicleman, K. Sargent, Calgary Golden Route, for each trip since December 20, 1981, for time spent conducting British Columbia Provincial Government mandatory brake safety checks on his tractor-trailer unit at the summit of Ten Mile Hill east of and prior to proceeding downhill into Golden, British Columbia.

EMPLOYEES' STATEMENT OF ISSUE:

The checking of the brakes on tractor and trailer units at the top of what is known as the Ten Mile Hill east of Golden, British Columbia, are mandatory safety brake checks by the British Columbia Provincial Government regulations which are posted to effect the mandatory checking of brakes for safety purposes.

The Brotherhood contends that the performance of this Provincial mandatory regulations is a task which is not required at other locations and, that, inasmuch as these specific duties are mandatory that K. Sargent must carry out this safety brake check which constitutes work time of five minutes each trip which is within the meaning of Article 33.4.

The Company suggest that such time is paid for by the mileage rate of pay and is identical to a driver having to stop at a weigh station and thus forms part of the normal duties of a mileage rated vehicleman as in Articles 33.1 and 33.2 and for this reason have declined the Brotherhood's request for five minutes each trip.

COMPANY'S STATEMENT OF ISSUE:

Checking of brakes on units at summit of Ten Mile Hill is a British Columbia Government posted regulation required for all commercial vehicles.

The Company maintains that such time is paid for by the mileage rate of pay and is identical to a driver having to stop at a weigh scale or observing any other Provincial regulation governing highway operations and thus forms part of the normal duties of the trip. The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

D. R. Smith – Director, Labour Relations & Administration, Toronto
B. D. Neill – Manager, Labour Relations, Toronto
P. E. Timpson – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
G. Moore – Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

The particular task for the performance of which payment is here sought is that of conducting a particular safety check, required by Provincial regulations, at a particular point en route. The driver is required, at that point, to stop his vehicle and conduct the brake check. This is an interruption of the trip for which the driver is paid on a mileage basis. If the safety check were to reveal conditions which called for repairs, time spent effecting the repairs would be paid for. What is at issue is the time spent on the safety check itself.

There are, it may be noted, other interruptions which might occur in the course of a trip which would not affect entitlement to or the extent of the mileage-based payment. These would include interruptions caused by the driver himself, as for a snack or a "comfort stop", or those imposed by regulations – as at traffic lights – or simply by circumstances, as in heavy traffic or at accident sites.

Mileage-rated drivers, such as the grievor, are entitled to payment pursuant to Article 33 of the Collective Agreement. Article 33.1 provides for payment for "terminal delay", which is exclusive of time spent on such "normal duties" as "inspecting and servicing units". Similarly, by Article 33.2, spotting of trailers and inspection of units on arrival at final destination is covered by the mileage rate. **Case No. 771** dealt with the special case where equipment was changed over en route, and it was held that in such cases, time spent on a safety check was payable as "work time". "Work time", by Article 33.4, includes "loading and unloading and repairing equipment". "Wait time", by Article 33.5, includes "waiting to be loaded, unloaded, meets or turnarounds exclusive of the first hour, equipment to be repaired and impassable roads to be cleared". In **Case No. 771** the safety check carried out at a meet or turnaround was on different equipment from that initially taken out and constituted an additional task to those contemplated by the series of provisions in Article 33.

Likewise, in **Case No. 894**, the unlocking of the compound gates was, in the circumstances, an additional task for which separate payment was proper.

In the instant case the brake check is an aspect of vehicle operation - quite distinct from vehicle repair - which, while it may be unique to a particular geographical location, or newly-imposed on the route in question, is simply an incident of highway driving not really very different from the installation of a new set of traffic lights, which may have some very minor effect on the length of the trip, but which does not go beyond what might really be considered as a normal driving task, and is, in my view, included in the duties paid for by the mileage rate.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR