

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1093

Heard at Montreal, Wednesday, May 11th, 1983

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer W. Begal of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer Begal was ordered in straightaway freight service from Steep Rock to Winnipeg on February 8, 1982. Prior to departing Steep Rock with his train, he performed switching at both Steep Rock, the initial terminal and Steele Bros. industrial spur which is located beyond the outer switch of Steep Rock. Locomotive Engineer Begal claimed 6'20" at yard rates for the switching performed at these two locations.

The Brotherhood contends that time spent switching Steele Bros. industrial spur must be included in the computation of initial terminal time under the provisions of Paragraphs 11.2 and 11.3 of Agreement 1.2.

The Company declined the claim for yard rates.

FOR THE BROTHERHOOD:

(SGD.) A. JOHN BALL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

M. Delgreco – Senior Manager, Labour Relations, Montreal
M. Healey – System Labour Relations Officer, Montreal
J. A. Sebesta – Co-ordinator – Special Projects, Montreal

And on behalf of the Brotherhood:

A. J. Ball – General Chairman, Regina

AWARD OF THE ARBITRATOR

The grievor was engaged in straightaway freight service from Winnipeg to Steep Rock and return, Steep Rock to Winnipeg. He commenced duty on Train 826, Steep Rock to Winnipeg, immediately upon his arrival in Steep Rock, at 0630 on February 8, 1982.

Prior to departure for Winnipeg, the crew of Train 826 placed 46 cars on a siding within the designated terminal limits of Steep Rock. They then ran .9 miles outside the designated terminal limits to pick up cars at the Steele Brothers industrial spur, returning to Steep Rock where they completed making up their train. They then performed an air brake test, obtained a Manual Block System clearance, and departed for Winnipeg, clearing the outer switch at Steep Rock at 1250 and arriving Winnipeg at 1755.

Articles 11.2 and 11.3 of the collective agreement (article 11 deals with Detention and Switching at Initial and Final Terminals and at Turnaround Points) are as follows:

FREIGHT SERVICE

11.2 Locomotive engineers will be paid on the basis of 12-1/2 miles per hour at the applicable rate at initial terminals from the time due to leave shop or other designated track or change-off point until departure at outer switch; at final terminals from the time of arrival at outer switch until arrival on shop track or other designated track or change-off point, and at turnaround points from time of arrival until departure at outer switch. Outer switch means the switch normally used in heading into the yard and road mileage commences and ends at the outer switch.

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.

If the switching at the Steele Brothers spur prior to departure for Winnipeg is included in initial terminal time, then, since more than five hours of 'yard work' were involved, payment at yard rates would be called for, under article 11.3.

The Company's contention is that the Steele Brothers spur was an industrial spur enroute, and that payment for work at that point was properly made pursuant to article 16 of the collective agreement which deals with payment for engineers required to switch enroute industrial spurs.

In my view, the Steele Brothers spur was not switched "enroute", that is, in the course of the trip from Steep Rock to Winnipeg, which began at 1250 when the train cleared the outer switch at Steep Rock. Had it, in the course of that trip, stopped to carry out switching at the Steele Brothers spur, then article 16 might well apply, although that is not this case, and although it may be noted that the spur would appear to be within the yard limits (even although beyond the outer switch) of Steep Rock. In the instant case the switching at the Steele Brothers Spur was done as part of the work of making up the train which, once made up, departed Steep Rock and did not then switch the industrial spur. In my view, article 16 did not apply.

What occurred here is closely analogous to the situation dealt with in **Case no. 1081** where switching (after arrival at final terminal), at a spur beyond the outer main track switch although within yard limits was held to be final terminal switching, as the employer in that case had urged that it was. While different collective agreements were involved, the provisions for payment are similar. In the instant case, the claim made is, I find, for initial terminal time prior to actual departure, and the grievor's claim was properly allowed.

For the foregoing reasons, the grievance is allowed. The grievor's claim is to be paid, subject to deduction of the amount paid under article 16.

(signed) J. F. W. WEATHERILL
ARBITRATOR