

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1412

Heard at Montreal, Tuesday, October 8, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer R. C. Barber of Edmonton, Alberta for six hours and forty-five minutes at yard rates for work performed on the Beamer Industrial Spur October 6, 1983.

JOINT STATEMENT OF ISSUE:

On October 6, 1983! Locomotive Engineer R. C. Barber was working in turnaround through freight service, Calder to Calder, Alberta via the Beamer Spur. Locomotive Engineer Barber submitted a claim for all time spent on the Beamer Spur, six hours and forty-five minutes, at yard rates.

The Company adjusted the time claim and paid the applicable through freight rate on the basis that the Beamer Spur is an Industrial Spur and yard rates are not applicable.

The Brotherhood contends the Company violated paragraph 11.3, article 11, Agreement 1.2, in declining yard rates of pay since the six hours and forty-five minutes claimed was for performing yard work at a turnaround point which included the Beamer Spur.

The Company disagrees.

FOR THE BROTHERHOOD:

(SGD.) J. W. KONKIN
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

G. Blundell – System Labour Relations Officer, Montreal
M. Healey – Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

J. W. Konkin – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

On October 6, 1983, Locomotive Engineer R. C. Barber was working in a turnaround freight service, Calder to Calder, Alberta via Beamer Spur. The grievor's turnaround point included the Beamer Spur Yard. Because the grievor spent approximately six hours and forty-five minutes on the Beamer Spur (which included his turnaround) he claimed the yard rate for that period pursuant to article 11.3 Agreement 1.2 which reads 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. (emphasis added)

The onus that was on the Trade Union in this case was to establish that the geographic vicinity covered by the Beamer Spur constituted the Beamer Spur Yard. Both parties agreed, in the absence of a definition of "yard" in the collective agreement, I should be governed by the definition provided under the UCOR Rules:

A system of tracks provided for the making up of trains, storing of cars and for other purposes, over which movements not authorized by time table or train order may be made, subject to prescribed signals, rules and special instructions.

As the employer effectively demonstrated, not all time spent by Locomotive Engineer Barber on the Beamer Spur was occupied in performing yard duties. Rather, the grievor was doing what he was obliged to do.

He was making the necessary stops on the Beamer Spur where the industrial businesses and undertakings requiring freight service were located. And, of course, at those points the grievor was performing the required, scheduled duties that were set out in his timetable. In short, the grievor's scheduled work while, in part, on the Beamer Spur was involved in performing freight service. Accordingly for that period of time he was governed for pay purposes by article 16.1 of the collective agreement which reads as follows:

Switching Industrial Spurs - Freight Service

16.1 Locomotive engineers required to switch en route industrial spurs over one mile in length, and provided that such work is performed not less than one mile from the main line, will be paid at the rate of 12.5 miles per hour, as per class of service for all time so occupied, in addition to pay for trip. Time paid under this article will not be used to make up the basic pay but will be deducted when computing overtime. (Emphasis added)

There is no doubt that a part of the six hours and forty-five minutes claimed by the grievor at the Yard rate was spent at the yard designated by the Company as the Beamer Spur Yard. Nonetheless, in making his timekeeping report the grievor made no attempt to differentiate the freight service he performed on the Beamer Spur from the yard service he performed at the Beamer Spur Yard. Indeed, what the grievor has attempted to do is exploit the Company's error in describing his turnaround "at the Beamer Spur". It does not follow from that mistake that the Beamer Spur is at all coincidental or co-extensive with the Beamer Spur Yard. And, nothing argued by the Trade Union has convinced me to come to a different conclusion.

Since the grievor has failed to establish that the amount claimed as yard service was performed in yard service his grievance must be denied.

(signed) DAVID H. KATES
ARBITRATOR