CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2027

Heard at Montreal, Tuesday, 12 June 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer G.W. Vandane, of Melville, for miles reduced from his time return dated April 3, 1986.

JOINT STATEMENT OF ISSUE:

On April 3, 1986, Locomotive Engineer Vandane was ordered at Watrous in turnaround service for Train 578 to Watrous via Alwinsal Mine. Locomotive Engineer Vandane submitted a time return claiming a total of 173 miles for the trip, of which 117 miles were for the road time. The Company adjusted the road time portion of the claim to reflect 100 miles in accordance with Article 9.2 of Agreement 1.2.

The Brotherhood contends that in addition to the 100 miles claimed under Article 9.2, Locomotive Engineer Vandane was entitled to the actual miles travelled over the Alwinsal Spur in accordance with Addendum No. 29 of Agreement 1.2

The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) D. S. KIPP	(SGD) M. DELGRECO
GENERAL CHAIRPERSON	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. D. Morrisey	– Manager, Labour Relations, Montreal
L. A. Harms	– System Labour Relations Officer, Montreal
R. Paquette	– System Labour Relations Officer, Montreal
M. Fisher	– Co-Ordinator, Transportation, Montreal

And on behalf of the Brotherhood:

D. S. Kipp	– General Chairman, Kamloops

AWARD OF THE ARBITRATOR

It is common ground that Locomotive Engineer Vandane was ordered in turnaround service to and from Watrous, which included a run to the Alwinsal Mine Site. This involved travelling eastward on the Watrous Subdivision a distance of some five miles, switching onto the Alwinsal Mine Spur and running northward 16.7 miles to the Mine Site, and then returning via the same route. It is common ground that the grievor was entitled to one hundred miles for the road portion of his trip under Article 9.2 of the Collective Agreement. The issue is whether he is also entitled to separate payment for miles travelled on the Alwinsal Spur. Addendum No. 29 of the Collective Agreement provides, in part, as follows:

> Accordingly, because of the length of the industrial trackage on the Brazeau subdivision which is commonly known as Aquitane Spur (27 miles); on the Sangudo subdivision which is commonly known as the Grizzly Sulphur Spur (14.6 miles); and on the Watrous subdivision which is commonly known as the Alwinsal Mines Spur (16.7 miles); and notwithstanding the provisions of Article 18 (now Article 16), the Company is prepared to compensate movements undertaken on this trackage on the basis of actual miles plus detention and switching at the turnaround point. Such time will not be used to make up the basic day but will be deducted when computing overtime.

The position of the Brotherhood is that the grievor is entitled to a separate payment, over and above the one hundred mile minimum provided in Article 9.2 for the work actually performed on the Watrous Subdivision. In the Arbitrator's view, that position appears to ignore the original intention in respect of the special provisions of Addendum No. 29 as they applied to the Alwinsal Mine Spur. That addendum originated in September of 1976, apparently in response to a demand by the Brotherhood for an amendment in respect of the application of Article 18 (now Article 16) relating to the payment for miles run on industrial spurs. At that time the general flow of traffic was from Watrous to Melville via the Alwinsal Mine Site, and return. The payment contemplated for running on the unusually long Alwinsal Mine Spur was fashioned in that context. Subsequently, when potash shipments shifted to western seaports after 1980, the traffic flow was changed to turnaround service from Watrous to Watrous via the Mine Site. That shorter run, which totals some 43.4 miles triggers the application of Article 9.2, and an engineer's entitlement to a minimum of one hundred miles notwithstanding a run of shorter distance.

In the Arbitrator's view, absent clear and unequivocal language, it should not be concluded that the parties intended that locomotive engineers should be compensated twice for the same work, namely by the pyramided application of Article 9.2 and Addendum No. 29. As the history of Addendum No. 29 reveals, it was intended as a substitution for Article 16, which specifically provided for the payment of 12.5 miles per hour for time run over an industrial spur, such payment to be ".. in addition to pay for trip."

The Arbitrator finds more compelling the position of the Company, which is that if the parties had intended that the payment under Addendum No. 29 was to be made in addition to the pay for the trip, they would have said so expressly, as is the case under Article 16, and as appears in other parts of the Collective Agreement, including Articles 13.2 and 15.1 which involve switching at intermediate terminals and railway junction points.

It appears to the Arbitrator that Addendum No. 29 was brought into effect because, in 1976, it was felt that the protections of what is now Article 16 were not sufficient for work over several exceptionally long spurs. That intention is plainly superfluous when, after 1980, short runs in turnaround service from Watrous to Watrous were instituted. Moreover, the fact that no grievance appears to have been taken for a period of some six years against the Company's interpretation, is evidence that the parties did not intend that the exceptional protections of Addendum No. 29 should apply in addition to the protections afforded to locomotive engineers engaged in short runs, as provided under Article 9.2 of the Collective Agreement.

For the foregoing reasons the grievance is dismissed.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR