CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2160

Heard at Montreal, Thursday, 13 June 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer L.W. Hoodicoff, Cranbrook, B.C., for 25 miles under Article 9(a).

JOINT STATEMENT OF ISSUE:

On June 23, 1989, Locomotive Engineer Hoodicoff was ordered in straightaway service Sparwood to Fort Steele. Due to problems in the loading of the coal train he was being called to operate at a Company customer's work site, Locomotive Engineer Hoodicoff's call was changed to turnaround service.

The Brotherhood contended that the Company's actions constituted a cancellation of his original call and submitted a claim for 25 miles pursuant to Article 9(a).

The Company denied Locomotive Engineer Hoodicoff's claim and contends that its actions were appropriate in accordance with Article 2(b) and therefore submits that the grievor is not entitled to payment of the claim.

The Brotherhood contends that the circumstances which occur as a result of a Company customer's operations do not come within the parameters of "unforeseen circumstances" provided for in Article 2(b).

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) T. G. HUCKER	(SGD.) C. E. MINTO
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATIONS & MAINTENANCE WEST, HHS

There appeared on behalf of the Company:

D. A. Lypka	– Unit Manager, Labour Relations, Vancouver
L. S. Wormsbecker	– Labour Relations Officer, Montreal
B. P. Scott	– Labour Relations Officer, Montreal
G. Chehowy	– Labour Relations Officer, Montreal
R. N. Hunt	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker	– General Chairman, Calgary
D. Lancaster	– Local Chairman, Cranbrook

AWARD OF THE ARBITRATOR

It is common ground that the change in the designation of Locomotive Engineer Hoodicoff's service was occasioned by a breakdown in train loading equipment at the customer's work site. While the evidence before the Arbitrator does not establish whether the tracks being utilized in the loading of the coal train belong to the customer or to the Company, there is no dispute that the coal train loading equipment which broke down, occasioning a substantial delay in the movement of the train in question, was under the ownership, care and control of the customer, a mining company. The grievor's claim for compensation under article 9(a) is based on the application of article 2(b) of the collective agreement, which provides, in part, as follows:

> **2(b)** Engineers will be notified when called whether for straight-away or turnaround service and will be compensated accordingly. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call, such as accident, locomotive failure, washout, snow blockade, or where line is blocked.

The issue is whether the breakdown of the customer's loading equipment at its Line Creek mine site falls within the purview of "… circumstances which could not be foreseen at time of call", within the meaning of the foregoing article. The position advanced by the Brotherhood is that any breakdown, blockage or other emergency within the contemplation of that article must be limited to the property and equipment of the Company, and does not extend to the property or equipment of a customer. In the Company's view that interpretation is unduly narrow, and out of keeping with the general purpose of the article.

In the Arbitrator's view the application of article 2(b) of the collective agreement in any given case must depend on the particular facts at hand. There are many circumstances in which the property and equipment of the Company are closely integrated with the property and equipment of an industrial customer. This is particularly true in locations such as mines, mills and harbour facilities where trackage and locomotives in use may belong either to the Company, or to its customer, or to a combination of both, and where normal railway operations require the Company's own equipment to work in tandem with the equipment of a customer, whether in loading, unloading, switching or other operations.

Against that reality, it appears to the Arbitrator that a purposive interpretation of article 2(b) must recognize that it is intended to address unforeseen circumstances, usually in the nature of a physical breakdown or obstacle, which can arise within the broader context of railway operations that may involve the integration of the Company's own equipment with that of its customer. Any other approach could result in an application of article 2(b) that would, arguably, be out of keeping with its purpose and arbitrary in its consequences. For example, to apply the article in favour of the Company when a line blockage is caused by the derailment of a customer's own yard locomotive, while failing to apply it when an unforeseen delay is caused by a breakdown of the customer's loading equipment, would result in a distinction of dubious value in light of the underlying purpose of article 2(b). It seems to the Arbitrator that the exception contemplated within that provision is intended to shelter the Company from the payment of a penalty where it is established that the circumstances for a delay, or for a change of call, are occasioned by an unforeseen event affecting the functioning of railway equipment and operations generally. I can see nothing in the language of the article which would restrict the concept of railway operations solely to the equipment and property of the Company. Where, as in the instant case, specialized cars, yard trackage and a customer's loading equipment are specifically designed to function as an integrated whole, an unforeseen breakdown in any equipment directly impacting a loading or unloading operation would, it seems to me, come within the contemplation of the article.

That, moreover, appears to be reflected in a degree of past practice in the industry. The unrebutted representation of the Company is that in the handling of grain and other agricultural products, unforeseen breakdowns in customers' loading facilities and yards have, in the past, been treated as justifying a change of call within the contemplation of article 2(b), without the payment of penalty. This has been done without objection by either the Brotherhood or the union representing trainmen. Indeed, in the instant case, there appears to be no grievance filed in respect of the trainmen who worked as part of Locomotive Engineer Hoodicoff's crew. Moreover, the record before the Arbitrator establishes that breakdowns of the type encountered in the instant case have not been uncommon, yet there is no evidence of union claims such as the instant grievance in such cases. On the whole, therefore, the past practice appears to support the Company's position.

For the foregoing reasons, the Arbitrator is persuaded that the position advanced by the Company regarding the application of article 2(b) in the circumstances of the instant case is to be preferred to that of the Brotherhood. In so

concluding, however, the Arbitrator should not be taken as endorsing the suggestion of the Brotherhood that an acceptance of the Company's position would erode the protections of employees under article 2(b) to the extent that events such as a customer's office party or picnic which delay the movement of a train could be pleaded as an unforeseen circumstance for the purposes of the article. Plainly, as elaborated above, the article contemplates events or incidents, generally physical in nature, which directly impact railway operations such as road and yard movements and the loading and unloading of trains. It was not argued before the Arbitrator (and I have difficulty seeing how it could be) that the language of article 2(b) can be applied to remote and indirect circumstances such as those alluded to by the Brotherhood.

For the foregoing reasons the grievance must be dismissed.

June 14, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR