CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2665

Heard in Calgary, Tuesday, 14 November 1995

concerning

CANADIAN PACIFIC RAILWAY LIMITED

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Claim of Conductor W.R. Hutchinson, Moose Jaw, Saskatchewan, for 40 minutes or 8 miles at Conductor's Through Rate for handling an SBU from his train to the radio shop, in addition to payment for his trip, April 3, 1991.

JOINT STATEMENT OF ISSUE:

On April 3, 1991, Mr. Hutchinson was the conductor on a freight train in turnaround service from Moose Jaw to Grand Coulee and return. His tour of duty did not require him to travel in excess of 100 miles actually run and, therefore, pursuant to article 11, clause (c)(l), he was entitled to claim constructive miles to make up his entitlement to a basic day, exclusive of payment for switching, initial terminal detention and time at turnaround points. Final terminal time, not including switching, will, however, be used to make up a minimum day.

Mr. Hutchinson was used individually after his train had been yarded at the objective terminal, to remove and transport a Sensor Braking Unit (SBU), from his train to the radio room. This requirement involved a total time of 40 minutes.

The Union contends that, pursuant to article 11 of the collective agreement, Mr. Hutchinson is entitled to payment for the time used individually, to transport the SBU, in addition to his payment for the tour of duty just completed.

The Company has refused payment on the basis that the work performed does not constitute switching, is considered as other duties as defined by article 11(h) and therefore is used to make up a minimum day as final terminal detention time.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) L. O. SCHILLACI	(SGD.) M. E. KEIRAN
GENERAL CHAIRPERSON	FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

L. Guenther – Labour Relations Officer, Vancouver
M. E. Keiran – Manager, Labour Relations, Vancouver

And on behalf of the Council:

L. O. Schillaci – General Chairperson, Calgary
K. Jeffries – Vice-General Chairperson, Cranbrook

AWARD OF THE ARBITRATOR

This grievance involves a dispute between the parties as to whether work performed during the course of final terminal detention time, which is not switching, is to be applied to make up a minimum day, or is to be paid over and above the minimum guarantee.

On April 3, 1991 Conductor Hutchinson was ordered in turnaround freight service at Moose Jaw to Grand Coulee and back to Moose Jaw. As his train departed Moose Jaw at 14:45, he was entitled to nine miles for forty-five minutes initial terminal time. He was also paid for thirty-two miles to Grand Coulee as well as seven miles for thirty-two minutes of turnaround time at Grand Coulee. He was further paid thirty-two miles for the return to Moose Jaw. Thirty-six constructive miles were added to his sixty-four miles, to make the minimum of one hundred miles. Therefore he was, in the Company's view, entitled to compensation for one hundred and sixteen miles for his tour of duty, which extended over a period of four hours and forty minutes.

It is common ground that Conductor Hutchinson's train arrived in Moose Jaw at 17:38 and that he went off duty at 18:40. This would have involved a period of one hour and twenty minutes of final time. It is agreed that all but forty minutes of that time would be included in the minimum day. At issue is whether the forty minutes, which the grievor spent in transporting an SBU from the rear of his train to the radio room, should be paid separately and above the daily minimum, or whether they should be included as service falling within the daily guarantee of one hundred miles. The SBU is a sensing device mounted on the side of the trailing coupler casting of a train, which is also coupled to the brake pipe of the rear car. It transmits information in respect of brake pipe pressure, motion and direction to the lead locomotive, thereby providing information essential to the operation of a cabooseless train.

The following provisions of the collective agreement are pertinent to the resolution of this grievance:

> **11 (c) (1)** In all freight … service, 100 miles or less, 8 hours or less, constitute a day's work, exclusive of payment for switching, initial terminal detention and time at turnaround points. Final terminal detention (not including switching) will be used to make up the minimum day. When trains are turned at intermediate points, actual mileage both ways on round trip will be counted as mileage of run.
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> **11 (h) Final Terminal Time**
> Trainmen will be paid final terminal time, including switching, on the minute basis at 12-1/2 miles per hour at rate of class of service performed from the time locomotive reaches outer main track switch or designated point at final terminal; should train be delayed at or inside semaphore or yard limit board, for any reason, or behind another train similarly delayed, time shall be computed from the time train reached that point until the train is yarded.
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> Members of train crews may be required after train has been yarded at the objective terminal to render individually any service required incidental to the trip just completed. When any member of the crew is used individually, the balance of the crew will be relieved from all responsibility and the man used to perform this service will be paid his regular rate in the class of service employed for all time occupied if held in excess of 15 minutes. If switching is required, not less than three of the crew will be on duty except as provided in article 9 and will be paid final terminal time for all time so used, computed from the time of arrival at the outer switch or designated point where road service ends. Switching does not include taking locomotive or self-propelled equipment to the shop or tie-up track.
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> When trainmen are held for any other service, they will be entitled to all time held computed from the time train is yarded.
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> It is understood the train is not considered yarded until it has been secured.
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> Final terminal time, except time occupied in switching, will be used to make up a minimum day.
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> Trainmen used individually for service at the final terminal will submit their own wage ticket.
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> Time paid for under this clause (h) will not be included when computing overtime.

This issue is whether, as the Company contends, the work performed by Conductor Hutchinson in handling the SBU is properly described as final terminal time which is to be used to make up a minimum day, to the extent that it does not involve switching. The Union contends that the time spent by Mr. Hutchinson in delivering the Sensor Braking Unit to the radio room is not to be used to make up the minimum day, based on a prior case arising out of a time claim dispute at Coquitlam, B.C. in 1972.

It appears that in 1972 the Company's General Manager, W.W. Stinson allowed the claims of two trainmen from Coquitlam for five miles each when they were required to move their locomotive consist from their train to the shop track, where the time expended exceeded fifteen minutes. With respect, the details of that claim, and its allowance by the General Manager in an isolated case some twenty years ago, does little to assist the application of the collective agreement in the case at hand. It is not disputed before me that the work performed by Conductor Hutchinson properly falls under the definition of final terminal time. It appears to the Arbitrator that the collective agreement is clear and categorical, as reflected in both article 11(c)(1) and in the language of article 11(h), that final terminal time, with the exception of switching, is to be applied towards making up a minimum day. There is no suggestion that the work performed by Conductor Hutchinson in the case at hand can be characterized as switching. Neither can it, in the Arbitrator's view, be characterized as "other work" not incidental to the trip just completed. Nor was it performed in circumstances where Conductor Hutchinson and his crew worked beyond the minimum guarantee of one hundred miles.

As noted by the Company's representative, an examination of other provisions of the collective agreement reveals articles where the parties have specifically adverted to employees being paid for certain forms of service at an initial or final terminal. For example, in conductor-only operations under article 9A, 2(b)(ii) and 2(d)(ii) the words "in addition to" appear, so as to make it clear that the payment there contemplated is in addition to other payments to which the employees are entitled. There is no similar language appearing in article 11(h) of the collective agreement with respect to final terminal time, exclusive of switching. By way of contrast, article 11(c)(1) of the collective agreement provides for payment in addition to the guarantee for both initial terminal detention and time detained at turnaround points. Indeed, in the case at hand, Mr. Hutchinson was properly paid an additional sixteen miles by the application of those provisions.

In essence, the Union's case stands or falls largely on the basis of a single claim considered by the Company's General Manager at Coquitlam in 1972. The unchallenged representation of the Company, however, is that the preponderant practice system wide, including Coquitlam, is that claims such as that advanced by the grievor in the instant case have not been honoured by the Company. Consistently, such time has been interpreted as going to the makeup of the minimum day. In the result, the Arbitrator is satisfied that if it can be said that there is some ambiguity in the language of article 11(h) of the collective agreement with respect to the treatment of the time spent by Mr. Hutchinson, so as to allow an examination of past practice, with the sole exception of the one incident in 1972, the past practice overwhelmingly supports the interpretation advanced by the Company.

This Office has, for many years, used great caution in interpreting language which would result in payments which are unduly in excess of the minimum day, in the absence of clear and unequivocal language to support such claims (**CROA 9, 148, 512, 594** and **2256**.). The awards recognize the importance of the minimum guarantee as a protection to the employee. By the same token, the awards generally require that an employee claiming payment in excess of the minimum guarantee be able to point to clear collective agreement language to support his or her claim. As it was expressed by Arbitrator Hanrahan in **CROA 9**, in denying a claim for payment in excess of the minimum day for work train service en route in excess of one hour:

> In the view of this Arbitrator, it would require words not appearing in Article 20, Clause (I) to sustain this claim. To give effect to the Brotherhood's reasoning the Clause would have to contain a qualifying provision such as "Time so paid shall not be used to make up a minimum day". That intention does not appear even by inference.

For the reasons related above, in the instant case both the language of the collective agreement and the preponderant past practice support the interpretation advanced by the Company. The grievance must therefore be dismissed.

November 20, 1995

(signed) MICHEL G. PICHER
ARBITRATOR