

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2908

Heard in Calgary, Wednesday, 12 November 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

EX PARTE

DISPUTE:

Claim on behalf of Locomotive Engineer M.S. Bhullar of Winnipeg, Manitoba for yard rates of pay in accordance with article 11.3 of agreement 1.2.

COMPANY'S STATEMENT OF ISSUE:

On December 28, 1994, Locomotive Engineer Bhullar was called in straight away service for train 461 to operate between Winnipeg and Rivers, Manitoba. Locomotive Engineer Bhullar was ordered for 13:15, departed Symington yard at 14:10, arrived Fort Rouge yard at 14:50 and departed Fort Rouge at 18:25 passing the outer switch at 18:50.

It is the Brotherhood's position that Locomotive Engineer Bhullar was required to perform yard work in excess of five (5) hours and is entitled to yard rates per hour for the actual time occupied pursuant to article 11, paragraph 11.3 of agreement 1.2.

The Company disagrees.

COUNCIL'S STATEMENT OF ISSUE:

On December 28, 1994, Locomotive Engineer Bhullar was called in straight away service for train 461 to operate between Winnipeg and Rivers, Manitoba. Locomotive Engineer Bhullar was ordered for 13:15, departed the Winnipeg Terminal at 18:50. A claim for yard rates pursuant to article 11, paragraph 11.3 was submitted.

It is the Brotherhood's position that Locomotive Engineer Bhullar was required to perform yard work in excess of five (5) hours and is entitled to yard rates per hour for the actual time occupied.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh	– Labour Relations Officer, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
K. Morris	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton

And on behalf of the Council:

D. J. Shewchuk – Senior Vice-Chairman, Saskatoon
D. E. Brummund – Vice-Chairman, Kamloops

AWARD OF THE ARBITRATOR

Article 11.3 of the collective agreement 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.

The material before the Arbitrator establishes that the grievor's movement departed Symington Yard, proceeded to Fort Rouge Yard and eventually passed the outer switch at 18:50. Calculated from its departure time of 14:10 from Symington Yard, the grievor's movement plainly required in excess of five hours to clear the Winnipeg Terminal. On that basis the Council submits that grievor is entitled to payment for the time contemplated under the terms of article 11.3.

The Arbitrator cannot agree. Article 11.2 of the collective agreement does, as the Council's representative submits, specifically contemplate payment for time expended within an initial terminal. It reads as follows:

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 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 the shop track or other designated track or change off point and at turnaround points from the 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.

It appears to the Arbitrator that article 11.3 addresses a separate circumstance, namely where a locomotive engineer is required to perform "yard work at any one yard" for a period in excess of five hours. While in the case at hand it would appear that five hours' work was performed within one terminal, there is no evidence to establish that the grievor's movement performed yard work within either Symington Yard, or the separate yard of Fort Rouge, for a period in excess of five hours. This is not a case where Symington Yard and Fort Rouge can be construed as a single yard. They are neither contiguous, nor is one a sub-section of the other. It does not appear disputed that they are in fact separated by some 5.6 miles of main line trackage. I can see nothing in the language of the provisions reviewed, nor in the cases cited (CROA 811, 1091, 1093, 1412 and 1683) to support the position advanced by the Council.

For all of the foregoing reasons the grievance must be dismissed.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR