

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3286

Heard in Montreal, Thursday, 12 September 2002

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

The issue in dispute involves the interpretation and application of article 11, clause (1) as it relates to payment of Conductor-only premium payments at International Nickel Corporation Ontario's (INCO) Levack Mine.

JOINT STATEMENT OF ISSUE:

Sudbury based train crews working Assignment #3 perform switching at Inco's Levack Mine. Levack Mine is an enroute location for the roadswitcher assignment.

Train crews working at these locations are required to handle empties and loads. The crew is required to make a number of moves on their train consist involving but not limited to spotting empties, loading cars, running around their train, as well as pulling spotted loaded cars.

The Union asserts that crews working at these locations are entitled to payment from the time they run around their train via #1 or #2 track Levack CP yard up to the time all duties inherent to switching have ceased and the conductor is located back in the engine.

9A (1) Except in roadrailer service, when a conductor-only crew is required to perform work enroute defined in article 9A, 2(c), the conductor will be paid on the minute basis as pro rata rates for all time so occupied, with a minimum payment of one hour at each of the first three stops made in accordance with article 9A (2)(c) during a tour of duty. All time paid for under this clause will be paid in addition to pay for the trip but time actually worked will be deducted in computing overtime. Work performed pursuant to article 9A (2)(c) at a fourth (4) and fifth (5) stop enroute shall not be paid pursuant to this rule.

Crews have submitted wage claims pursuant to Article 9A, clause (1) for all time occupied switching. Up to December 27, 1999 the claims were paid as submitted.

On or about December 27, 1999 the Company began reducing tickets by the time spent travelling from the Levack Yard to the Levack Mine.

The Union requested on behalf of the affected employees full monetary restitution or reimbursement of all loss of earnings suffered as a result of the Company's adjustment of claims submitted.

The Company has declined the Union's request.

FOR THE UNION:

(SGD.) D. A. WARREN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) R. E. WILSON
GENERAL MANAGER

There appeared on behalf of the Company:

- D. Freeborn – Labour Relations Officer, Calgary
- D. Guérin – Labour Relations Officer, Calgary
- P. Couture – Manager, Transportation, Montreal

And on behalf of the Union:

- D. A. Warren – General Chairperson, Toronto
- D. Colosimone – Vice-General Chairperson, Sudbury
- D. Généreux – Vice-General Chairperson, Montreal
- T. Houle – Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied that the grievance cannot succeed. In this case the Union claims conductor-only rates for the time crews are required to travel on a spur off the main line, some four and one-half miles, to the Levack mine ore loading facility of INCO. The submissions of the Union in the instant case are similar to those made in **CROA 3285** concerning the application of articles 9A(1) and 9A(2c).

It is common ground that running time is not paid at conductor-only premiums for road switcher crews. The work which is the subject of this dispute is, in the Arbitrator's view, virtually indistinguishable from running time, save that the running occurs on a length of track which is other than main track, enroute to the Levack mine facility. While it does appear that some crews prefer to run around their train at the switching point from the main line onto the Levack access track, they do so as a matter of personal preference, and not as a necessary incident of the assignment which they are given. They can, in other words, make that move at the mine site itself, if they choose. In the result, there is no requirement to push their movement over the length of track in question, in either direction.

In the Arbitrator's view it is important to bear in mind the fundamental purpose of conductor-only premiums. They are intended to compensate conductors for the extra work which they are compelled to perform by reason of the absence of a brakeperson. As is reflected in the language of the collective agreement provisions governing conductor-only operations, the emphasis in conductor-only work is upon operations associated with the switching of cars and blocks of cars as part of a crew's assignment. In essence, the work which is the subject of this dispute is indistinguishable from any other running during the course of a roadswitcher's assignment. There is nothing in the material filed which the Arbitrator finds compelling in support of the Union's claim that such work is intended to be compensated at the premiums relating to conductor-only service.

For the foregoing reasons the grievance must be dismissed.

September 13, 2002

(signed) MICHEL G. PICHER
ARBITRATOR