CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3517

Heard in Montreal, Tuesday, 11 October 2005

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Payment of doubling miles pursuant to paragraph 28.2, article 28 and 12.5 miles payment pursuant to paragraph 13.14, article 13 of agreement 4.3 to Conductor Lyle Kenny.

JOINT STATEMENT OF ISSUE:

On several occasions during September and October 1999, Conductor Lyle Kenny was required to perform line work, a stop enroute to service a customer, with a conductor only crew consist. Due to train length and rule compliance Mr. Kenny was required to leave his train at one location, travel to the customer's track, perform work there and then return to his train at the initial location. The Union contends that this is referred to as doubling.

Paragraph 28.2 of article 28 of agreement 4.3 provides for payment for doubling for reasons other than power failure. Paragraph 13.14, article 13 of agreement 4.3 provides for a minimum 12.5 mile premium payment when required to pick up or set off cars in conductor only service.

The Union submits that Conductor Kenny is entitled to payment under both article 28 and article 13 as they are separate and distinct actions.

The Company disagrees, claiming that Conductor Kenny did not perform a double that warrants payment under article 28 of agreement 4.3. Nor is he entitled to a duplicate payment pursuant to article 13.15 of agreement 4.3.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. A. HACKL	(SGD.) B. LAIDAW
FOR: GENERAL CHAIRMAN	FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
D. Gagné	– Manager, Labour Relations, Montreal
C. Joanis	– Manager, Labour Relations, Montreal

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairperson, Edmonton
R. A. Hackl	– Vice-General Chairperson, Edmonton

PRELIMINARY AWARD OF THE ARBITRATOR

This matter came on for hearing in Montreal on Tuesday, 11 October 2005. It is not disputed that the Company did not have notice of the intention of the Union to utilize legal counsel, a right which it has under the rules of the Office. In the circumstances the matter is adjourned to be heard in Calgary in November 2005. It should be noted that this Arbitrator heard no evidence and is not seized of the matter.

The matter is remitted to the General Secretary for rescheduling.

October 14, 2005

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR

On Wednesday, 9 November 2005, there appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
D. B. Brodie	– Manager, Labour Relations, Edmonton
J. Kane	– Payroll Audit Officer, Edmonton
B. Kalin	– Superintendent Operations, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. R. Boechler	– General Chairperson, Edmonton
J. W. Armstrong	– President, UTU Canada, Edmonton
R. A. Hackl	– Vice-General Chairperson, Edmonton
D. Finnson	– General Chairman, TCRC, Calgary
D. Able	– General Chairman, TCRC, Calgary
A. Singer	– Vice-General Chairman, TCRC, Cranbrook
G. Crawford	– Local Chairman, TCRC, Lethbridge

AWARD OF THE ARBITRATOR

The facts are not in dispute. In September and October of 1999 Conductor Kenny was directed by the Company to leave his train, destined for Edson, in Bissel Yard and to travel light engine to a nearby industrial switching location, for example at Acheson. He would then be required to either drop off or pick up cars at Acheson, or such other location as might be involved, and then return to Bissel Yard where he would re-couple his train and depart for Edson.

The Union submits that in that circumstance he should be compensated under article 28 of the collective agreement which governs doubling. It submits that the time expended in travelling from Bissel Yard to and from Acheson, or such other location as might be involved, is work different from simply picking up or setting off cars enroute, and should be properly compensated on a separate basis under the doubling provisions of article 28.

The Company characterizes the move in question as amounting to a setting out of cars or the pick up of cars enroute under the provisions of article 13.14 of the collective agreement which governs conductor only service. It submits that to pay additional compensation in the form of doubling would violate the intention of article 13.15 which stipulates that payments specified in article 13.14 should not result in duplicate payment. In other words, the Company maintains that the grievor was adequately compensated by being paid the 12-1/2 mile allowance established under article 13.14 and could not properly claim any additional payment for doubling.

The following provisions of the collective agreement are pertinent to this dispute.

> **13.14** When a train, operated with a crew consist of a conductor only in accordance with the rules governing such operation, is required to set out a car or cars (other than a bad order car or cars) or take on a car or cars or perform switching in connection with the setting out or taking on of a car or cars, the time so occupied, at each location, will be paid for on a minute basis (each 4.8 minutes to count as one mile) for the trip with a minimum of 12-1/2 miles for the first hour or portion thereof. Time so paid will not be used to make up the basic day nor shall it be used in computing overtime. In calculating the time engaged in performing work, it is understood that the time shall be continuous from the time such work is first started until it is finally completed.
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> **EXAMPLE 1:** A train, operating with a crew consist of one conductor only in accordance with the rules governing such operation, is required to set out a car or cars at A, a location en route, and to lift a car or cars at B, another

location en route. The time occupied at A is 20 minutes for which 12-1/2 miles is paid. The time occupied at B is 45 minutes for which 12-1/2 miles is paid.

EXAMPLE 2: A train, operating with a crew consist of one conductor only in accordance with the rules governing such operation, is required to set out and/or lift a car or cars at A, a location en route, as a consequence of which switching is required in order to comply with marshalling instructions. The time occupied at A is 1 hour and 15 minutes for which 15-1/2 miles is paid.

13.15 The provisions of article 26 do not apply in respect of trains which are operated with a crew consist of one conductor only in accordance with the rules governing such operation nor shall the payments specified in paragraphs 13.14, 13.15 and 13.16 result in duplicate payment, such as for example, other payment made en route, such as junction or switching en route.

13.16 Notwithstanding that a train meets the criteria for operation with a crew consist of one conductor only, the allowance set out in paragraphs 13.14, 13.15 and 13.16 shall not be paid when an assistant conductor is employed on that train in accordance with the rules governing such operation. However, the provisions of articles 16, 17, 24, 25, 26, 27, 28 and 29 will apply in respect of such trains.

…

26.1 Train service employees required to load or unload wayfreight O.C.S. coal, or switch en route, will be paid overtime at wayfreight rates on the basis of 12-1/2 miles per hour for time so occupied but not in excess of wayfreight rates for the full trip, such time will be deducted in computing overtime.

…

28.1 Train service employees will be paid a minimum of 10 miles for each double, or actual mileage when this minimum is exceeded. This paragraph will apply in all cases where train service employees are required to double on account of inability of engine to handle the train.

28.2 In cases where the double is made for reasons other than those outlined in paragraph 28.1, or where it is necessary to assist other trains, or for an engine to run for fuel or water and any member of the crew accompanies the engine, actual mileage run will be allowed the crew.

28.3 This article does not apply to work train service.

The traditional, and perhaps classical, example of doubling would involve a train which is compelled to break itself into parts so that the locomotive takes the separate parts of the train up a steep grade, returning to fetch each segment in turn. In that circumstance a crew is compelled to travel in a direction opposite from the normal movement of the train from its point of departure to its point of destination. Doubling has also been recognized as commonly

occurring in circumstances where one train may assist another. (See, generally, **CROA 305, 592, 609,** and **2300**.)

In the case at hand it is common ground that operational constraints made it impracticable to simply direct the grievor to proceed with his train to Acheson to do the pickup or set off, and then move onwards towards Edson. It does not appear disputed that the length of his train, if called upon to make such a move, would have unduly blocked a number of level crossings in a manner which would be impermissible, given the time involved. Operationally it was simpler to simply leave the main consist of cars in Bissel Yard, proceed light engine to Acheson, collect the cars in question and return to Bissel Yard where the consist could be re-coupled and then taken onwards to Edson.

The sole issue is whether the move so described can fairly be described as doubling for the purpose of payment under article 28 of the collective agreement, in addition to payment of the 12-1/2 miles conductor only premium provided for under article 13.14 of the collective agreement.

The Arbitrator can appreciate the interpretation advanced by both parties. On the one hand, the Company stresses that a conductor only crew is fully compensated by the application of article 13.14 because the payment begins with the departure from Bissel and ends at the moment of return to Bissel Yard, with all time compensated in accordance with the formula provided within article 13.14. On that basis it views the payment for doubling under article 28 as being a duplicate payment which would be contrary to the intention of article 13.15. On the other hand the Union stresses that the work involved is more than just stopping at a location to take on or set off cars, as contemplated in article 13.14. Rather, it submits, the mileage involved, for

example between Bissel and Acheson return, is tantamount to adding additional miles to the distance between the originating terminal and the terminal of destination. Its counsel argues that the time spent running to and from Acheson, for example, is not the time contemplated within article 13.14 for the setting out or taking on of a car or cars. Rather, it is additional running time, work which should be compensated and which properly falls under the doubling provisions of article 28.

After careful consideration, and limiting the finding to the specifics facts of the case at hand, the Arbitrator is compelled to prefer the interpretation advanced by the Union. Firstly, the Union's interpretation appears to be more consistent with the evidence adduced concerning the payment which is given to non-conductor only crews in respect of similar assignments. It would appear that if a crew which included an assistant conductor had been given the same assignment, consistent with pay records tabled in evidence, that crew would have received a payment for switching enroute under article 26 as well as a payment for doubling under the provisions of article 18 of the collective agreement. That, indeed, would appear consistent with the provisions of article 13.16.

In the Arbitrator's view what the comparison with the full crew brings to light is the fact that there is a logic to paying employees for their additional running time, hence the doubling payment payable to a full crew, as well as for their time expended in switching enroute, as contemplated under article 26. The fact that the conductor only provisions of article 13.14 contemplate a higher premium for the work involved with a one-person crew setting out or taking on cars enroute does not change the fundamental principle which would seem to apply.

A second basis of analysis also supports the Union's interpretation. As it's counsel stresses, article 13.14 contemplates payment for the time occupied in setting out or taking on a car or cars "at each location". That is reiterated within the examples provided in article 13.14 where reference is made to "the time occupied at A" and "the time occupied at B". Clearly, the focus is upon the time expended in making the set off or pick up, and not in travel to and from the location. If the Company's interpretation is to be accepted, the concept of "time occupied at Acheson" in the example under discussion, would also involve all time expended travelling in both directions between Bissel Yard and Acheson. In the Arbitrator's view that is not a concept which reconciles readily with the language chosen by the parties within the terms of article 13.14 of the collective agreement.

Lastly, it is not clear to the Arbitrator that the Company provided a convincing answer to one of the arguments made by the Union. One of the Union's representatives asserted that if a non-conductor only crew were assigned to perform the same work as was performed by Conductor Kenny, the time and mileage involved, through the application of article 13.16 of the collective agreement, would result in a greater payment being received by the full crew than would be paid to a person operating as a conductor only crew. If that is so the Arbitrator has great difficulty understanding the logic of an interpretation which would lead to that result.

In the result, I am satisfied that the interpretation of the Union is to be preferred, and that the payment to Conductor Kenny of the conductor only allowance provided for in article 13.14, coupled with the payment for doubling under article 28 of the collective agreement does not result in duplicate payment in a manner inconsistent with article 13.15 of the collective agreement. The payments under the two articles are for entirely different things. The premium payable under article 13.14 is in recognition of the work burden on a single conductor required to set out or take on cars enroute, while the separate provisions of article 28 in respect of

doubling are intended the ensure the proper payment for additional running time. This is not, therefore, a situation which gives rise to duplicate payment.

For all of the foregoing reasons the grievance must be allowed. The Arbitrator directs that the grievor's claims, including the time claimed for doubling, be paid. Should there be any issue as to quantum the matter may be spoken to.

November 14, 2005

(signed) MICHEL G. PICHER
ARBITRATOR