CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4107

Heard in Montreal, Wednesday, 9 May 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Time claim of Locomotive Engineer B. Blair for picking up entire train including power at Scotford, AB (point enroute) during tour of duty on assignment M31451-19, operating from Edmonton to Wainwright, AB.

COMPANY'S STATEMENT OF ISSUE:

On April 19, 2011, the grievor was called for train M31451-19 which involved a taxi from Edmonton to Scotford, pick up entire train including power, then operate the train to Wainwright.

The Union contends the grievor is entitled to payment pursuant to Article 18A.1 of Agreement 1.2, for setting out and taking on cars enroute in a Conductor Only operation.

The Company maintains the appropriate entitlement to wages for the grievor in these circumstances is found in Article 13.3 of Agreement 1.2.

FOR THE COMPANY:

(SGD.) K. MORRIS
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
D. Brodie	– Manager, Labour Relations, Edmonton

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
T. Markewich	– Sr. Vice-General Chairman, Edmonton
R. A. Beatty	– President, Ottawa
B. R. Boechler	– General Chairman, CTY, Edmonton
R. A. Hackl	– Vice-General Chairman, CTY, Edmonton
P. Boucher	– Arbitration Coordinator, Ottawa
P. Vickers	– General Chairman, CN Lines Central, Sarnia
B. Henry	– General Chairman, CTY, R'td, Edmonton

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. On April 19, 2011 Locomotive Engineer Blair undertook the assignment of Train 314. The Company characterizes his assignment as a straight-away assignment from Edmonton to Wainwright, via Scotford. In fact Mr. Blair, called to work at Edmonton, was deadhead by taxi to Scotford, some twenty-five miles from Edmonton. At that point he picked up his locomotive units and, after completing the usual air tests, picked up and assembled two cuts of cars, which constituted his train, and then departed to Edmonton on the Vegreville Subdivision, and from there to Wainwright on the Wainwright Subdivision.

The Company submits that the grievor was properly paid in accordance with article 13.3 of the collective agreement which provides as follows:

> **13.3** Employees in wayfreight or through freight service will be paid an allowance of 12 1/2 miles at the applicable rates when required to set out or pick up entire trains, including power, at a location en route between the initial and final terminals.

The Union maintains that in fact Scotford was a turnaround point in the grievor's assignment, so that he should have been entitled to more than the twelve and one half miles that were paid to him under article 13.3. It submits that he should have been entitled to payment for all time spent at the turnaround point, in accordance with article 11.2 of the collective agreement which 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 the 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 shop track or other designated track or change-off point, and at turnaround points from 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.

Alternatively, in the Union's submission the grievor should be entitled to payment under article 18A.1 of the collective agreement, which deals with the payment for time expended in setting out and taking on cars en route in Conductor Only operations.

The Arbitrator has some difficulty with the Union's claim. As a matter of first principle, it is within the Company's discretion to structure its assignments. On the day in question Locomotive Engineer Blair was called in assigned service to operate Train 314 in straight-away through freight service from Edmonton to Wainwright, via Scotford. I am satisfied that in making the assignment it did, the Company complied with article 65.3 of the collective agreement which reads, in part, as follows:

> **65.3** Locomotive engineers will be notified when called whether for straight-away or turnaround service and will be compensated accordingly.

This Office has recognized the distinction between straight-away service and turnaround service. That is reflected in **CROA 542**, where the arbitrator commented, in part, as follows:

> The question to be determined in this case is whether this was combined service and deadheading "involving a turnaround point". If it is such then, as article 61.4 makes clear the provisions of article 76 do not apply. There is no doubt that there was "combined service and deadheading" in this case Article 61.3 deals with combined service and deadheading on a straight-away basis, and provides that deadheading time is to be included with time occupied in other service, even when computing overtime. Article 61.4 deals with the case of deadheading combined with turnaround service, and refers to the basis for payment for time at the turnaround point. In this case, the time is excluded from overtime.

It may be noted that article 61.4 there under consideration is the present article 67.4 which provides as follows:

> **67.4** When combined service and deadheading involves a turnaround point, the provisions of Article 9 will not apply, but the time at the turnaround point will be paid for under Article 11. Such time will be excluded when computing overtime.

I am compelled to agree with the Company that the reference to a "turnaround point" in article 67.4 represents an explicit recognition that payment for actual time spent applies when an employee is assigned in turnaround service.

The Union argues, in part, that there is an illogical result if the grievor is restricted to the 12-1/2 mile payment at Scotford. Its representatives note that if an employee had been assigned on a shorter turnaround run Edmonton, Scotford and return to Edmonton, that individual, being in turnaround service, would receive payment for all time expended at Scotford. The Union questions by what logic it can be that an employee who, like the grievor, performs essentially the same service, albeit he then

operates his assignment beyond Edmonton to Wainwright, effectively receives less for the time expended at Scotford.

In the Arbitrator's view the answer to that question is that the parties have fashioned different forms of service within the terms of their collective agreement, and have assigned corresponding forms of payment, based on the nature of the service performed. It is within the prerogatives of the Company to structure its assignments as it sees fit, presumably to maximize efficiency and to reduce cost. The Union points to no provision of the collective agreement which prohibited the Company from assigning the grievor in straight-away service from Edmonton to Wainwright via Scotford. In the circumstances, I am compelled to conclude that he did fall squarely within the provisions of article 13.13 as the Company maintains.

Nor can I sustain the Union's alternative claim made under article 18A.1 of the collective agreement. That provision deals with setting out and taking on cars en route. That is plainly not what occurred in the case at hand. In fact, the grievor effectively assembled his train at Scotford and, insofar as can be determined, was not involved in taking on or setting off cars en route in that portion of his assignment which operated between Edmonton and Scotford, and return to Edmonton en route to Wainwright. There is, in my view, simply no basis for the application of article 18A.1 to the facts of the case at hand.

In the result, the Union has demonstrated no violation of the collective agreement, and the grievance must therefore be dismissed.

May 14, 2012

(signed) MICHEL G. PICHER

ARBITRATOR