CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 415

Heard at Montreal, Tuesday, July 10th, 1973

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor E.E. Toomath, Toronto, Ontario, for the months of January and February, 1972.

JOINT STATEMENT OF ISSUE:

Conductor E.E. Toomath was regularly assigned to trains 481 an 312. When departing on train 481 he reports for duty at Toronto Yard and when arriving on train 312 he is released from duty at Mimico, another point in Toronto terminal. The Company provides transportation and allows crews an arbitrary payment of one hour for travelling from Mimico to Toronto Yard.

In respect of the month of January, 1972, Conductor Toomath submitted a claim for pay equivalent to 742 miles at through freight rate to make up the guarantee provided by Article 14, Rule (c) of Agreement 4.16. The Company reduced payment of this claim by the equivalent of 260 miles. The Company made a similar reduction of 234 miles for February. Conductor Toomath submitted a grievance contending that by not allowing the additional 260 and 234 miles respectively, the Company violated Article 14, Rule (c).

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) G. R. ASHMAN (SGD.) G. H. BLOOMFIELD

GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal

M. DelGreco – Labour Relations Assistant, Montreal

E. B. Roach – Trainmaster, Toronto

M. G. Lyons – Senior Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

G. R. Ashman – General Chairman, Toronto

J. B. Meagher – Vice-Chairman Gen. Committee, Belleville

S. E. Allison – Local Chairman, Toronto

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AWARD OF THE ARBITRATOR

Article 14(c) reads, in part, as follows:

14 (c) Except as otherwise provided in Article 8, Rule (c), Items 2 and 3, trainmen in other freight train service regularly set up, will be paid not less than the equivalent of:

2,800 miles at through freight rates in the month of February; and

3,000 miles at through freight rates in any other calendar month.

(The provisions of Article 8(c) are not material in this case).

In the months here in question Conductor Toomath was not entitled by reason of miles run, to the amounts referred to. Accordingly, under Article 14(c), he was entitled to have his mileage made up to those amounts. The Company deducted from his claim the mileage equivalent of certain payments he had received by way of travel allowances, and the question is whether this deduction was proper.

Article 14 deals with "Guarantees – Freight Service". The travel allowance paid to Conductor Toomath in the months in question was paid pursuant to an agreement dated August 27, 1966, whose material provisions are as follows:

(c) Toronto based crews, whether assigned or unassigned, who are required to report for duty at one point in Toronto Terminal and are released from duty at another point in Toronto Terminal will be provided free transportation to the starting point.

(e) Except as provided for in Article 99 of the BRT Agreement, Article 8J of the BLE Agreement and Article 8L of the BLF&E Agreement, crews referred to in Clauses (a), (b) and (c) above will be allowed an arbitrary of one hour for such movement, at the rate applicable to the service for which called.

(The exceptions referred to in (e) do not apply here).

It may be noted that while it was the Company's position that the "arbitrary" payment could be considered part of an employee's earnings for the purpose of determining whether he had earned up to the amount of the guarantee, it would not constitute part of his mileage for certain other purposes, such as booking rest. It is not necessary for me to determine in this case whether these positions are inconsistent. It is sufficient to note that it appears to have been the case in the past that the payments were not considered by the employees to be the equivalent of miles run, for such purposes as booking rest, nor were they considered by the Company as forming part of the earnings going to make up the guarantee.

The "arbitrary" payments would, in my view, constitute "earnings" in the broad sense of being income derived from employment. They do not, of course, constitute earnings in respect of actual miles run. The payment is made, in conjunction with the provision of transportation, in respect of the time taken to return to a starting point where employees are released at another point within a terminal. The time so occupied, however, is not lumped together with actual "on-duty" time. The "arbitrary" payment is unrelated to the extent of the actual work performed by an employee.

In some cases the collective agreement has expressly dealt with payments not to be used to make up the monthly guarantee. In some of these cases, it may well be that such payments would be considered as going to make up the guarantee were it not for the express provision to the contrary. That there is express provision in such cases would not support the view that there would have to be expression in the instant case. The provision in the instant case occurs in a separate memorandum made to deal with a particular situation. In all of the circumstances, I am unable to read the parties' agreement as revealing any intention that the "arbitrary" payments should be used to make up the monthly guarantee. The situation is, I think, quite different from those considered in **CROA Case Nos. 65, 84, 170** and **222**, which dealt with the use of holiday pay to make up the guarantee. In those situations the relation ship between holiday pay and work opportunity is clear. Here, the payment is an "arbitrary", not related to an employee's duty requirements.

For the foregoing reasons, it is my conclusion that the "arbitrary" payments in question must be considered separately and apart from entitlement to the monthly guarantee, and no deduction from Conductor Toomath's claims should have been made in that respect. Accordingly the grievance is allowed.

(signed) J. F. W. WEATHERILL

ARBITRATOR