# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2795

Heard in Calgary, Thursday, 14 November 1996

concerning

## CANADIAN NATIONAL RAILWAY COMPANY

and

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

**DISPUTE:**

Claim on behalf of Locomotive Engineer G.G. Wlasichuk for train length allowance in accordance with article 1, paragraph 1.5(a) of collective agreement 1.2.

**JOINT STATEMENT OF ISSUE:**

On March 31, 1994, Locomotive Engineer G.G. Wlasichuk was called in straight away service for train 462 consisting of 5,340 feet, which was to operate between Melville, Saskatchewan and Rivers, Manitoba. at Melville, Mr. Wlasichuk entrained the incoming train 462 at the west end of Melville yard and handled the train to the east end of Melville yard, at which time he was then instructed to deadhead by taxi to Rivers. A claim for train length allowance of $7.00 pursuant to article 1, paragraph 1,5(a) was submitted.

The Brotherhood contends that Locomotive Engineer Wlasichuk handled train 462 during his tour of duty on March 31, 1994 and is entitled to the train length allowance of $7.00 under article 1.5(a).

The Company disagrees.

**FOR THE COUNCIL:**

**(SGD.) M. S. SIMPSON**
**FOR: GENERAL CHAIRMAN**

**FOR THE COMPANY**

**(SGD.) J. TORCHIA**
**FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA**

There appeared on behalf of the Company:

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| S. Blackmore | – Labour Relations Officer, Edmonton |
| J. Dixon | – Assistant Manager, Labour Relations, Edmonton |
| S. Michaud | – Labour Relations Officer, Edmonton |

And on behalf of the Council:

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| W. A. Wright | – General Chairman, Saskatoon |
| M. S. Simpson | – Senior Vice-Chairman, Saskatoon |
| D. J. Shewchuk | – Vice-Chairman, Vancouver |
| D. E. Brummund | – Local Chairman, Kamloops |

## AWARD OF THE ARBITRATOR

It is common ground that after he reported and commenced work pursuant to a call in road service the grievor was required to move his train during his tour of duty on March 31, 1994. As the evidence discloses, his entire endeavour was restricted to moving the train a distance of some one and one-half miles, all within the confines of the yard at Melville, Saskatchewan. Following the completion of the pull-by inspection and the spotting of the locomotives for fueling, the grievor was advised that he should deadhead to Rivers, which he proceeded to do.

The Council's position is that the grievor was involved in the movement of a train during the course of his tour of duty which attracted the train length allowance provided under article 1, paragraphs 1.5(a) of the collective agreement. That provision reads, in part, as follows:

> **1.5 (a)** Locomotive engineers in any class of freight service as described in paragraphs 1.4, 1.6, 1.7 and 1.9 of this article will be entitled to an allowance, per tour of duty, based on the maximum train length, including the locomotive consist, hauled at any one time during the tour of duty between the initial starting point and the point of final release:
>
> ...
>
> This train length allowance does not apply to locomotive engineers deadheading.

It is not disputed that paragraph 1.5(a) further provides an allowance of $7.00 for a train whose length is from 5,001 to 6,000 feet, as was the grievor's. The position of the Company is that the allowance is not payable as the grievor was not involved in moving his train over the road beyond the confines of a yard. It submits that the train length allowance found within paragraph 1.5(a) was intended solely as compensation for work performed by a conductor-only crew in road service.

In support of its interpretation, the Company draws to the Arbitrator's attention provisions contained within the collective agreement governing conductors and trainpersons which also deal with a train length allowance. Article 13.4 of the collective agreement between the Company and the United Transportation Union provides for a graduated premium payable for train lengths of 3,801 feet and over, with increments for each additional 1,000 feet of train. That provisions reads, in part, as follows:

> This applies to the maximum train length (excluding locomotives) hauled on the train at any one time on the road trip between initial starting point and point of final release.

The Company submits that the foregoing provision clearly reflects the intention that train length premiums are to be paid in conductor-only service for work performed on the road, as distinguished from within a yard. It further notes that the article here in dispute falls under the heading of "road service" in the locomotive engineers' collective agreement. On that basis, it argues that the grievor did not bring himself within the contemplation of article 1, paragraph 1.5(a) of the collective agreement, and is not entitled to the train length allowance of $7.00 claimed.

While the Arbitrator appreciates the perception which motivates the Company's position, it is the language of the collective agreement which must govern. As has become evident in recent cases, differing collective agreement provisions governing locomotive engineers, on the one hand, and conductors and brakepersons on the other hand, have emerged with respect to conductor-only operations (*see, e.g.*, **CROA 2790**). Whatever may be the formula found within the collective agreement for conductors and brakepersons, and the trade-offs which may have lead to that formula, the Arbitrator must, ultimately, resolve the instant grievance on the basis of the language of the locomotive engineers' collective agreement. I cannot properly have reference to extrinsic evidence, much less the provisions of a separate collective agreement, absent ambiguity in the language of the provision to be interpreted. After careful consideration, I can find no ambiguity in the language of article 1, paragraph 1.5(a) of the instant collective agreement.

There can be little doubt that the grievor was properly in road service at the time of the movement of his train through the confines of the yard at Melville. He and his conductor had taken over the movement from another crew incoming at the west end of Melville yard, and handled the train fully to the east end of the yard, where it was spotted for fuelling following a pull-by inspection. For reasons which are not apparent, Mr. Wlasichuk's assignment was then changed, and he was instructed to leave his train and deadhead to Rivers. When regard is had to the language of the provision in dispute, it cannot be doubted that the movement which the grievor pulled qualified for

the train length allowance claimed, and that Locomotive Engineer Wlasichuk operated the train during the course of his tour of duty in road service. There is nothing in the language of the article which would confirm that the parties intended that the initial starting point should be any point other than that point at which the locomotive engineer took control of his movement, or that the point of final release should be other than that physical location at which he and his conductor were released from duty in respect of the train. If, as the Company contends, the parties had intended that the initial starting point of an assignment originating within a yard must be deemed to be a point outside the limits of a yard, they could have said so in clear and unequivocal terms. Absent any such language, the Arbitrator is without any compelling basis to support the interpretation advanced by the Company. As the grievor was not in yard service, but was properly in road service, and duly handled a train during the course of his tour of duty, the length of which fell within the ambit of the allowances provided within paragraph 1.5(a) of article 1, he must be found to have been entitled to the train length allowance claimed.

For all of the foregoing reasons the grievance must be allowed. The Arbitrator directs that the grievor be compensated forthwith, for the train allowance in the amount of $7.00.

November 16, 1996

**(signed) MICHEL G. PICHER**
**ARBITRATOR**